Mrs. Rupan Deol Bajaj & Anr vs Kanwar Pal Singh Gill & Anr on 12 October, 1995

Equivalent citations: 1996 AIR 309, 1995 SCC (6) 194, AIR 1996 SUPREME COURT 309, 1995 (6) SCC 194, 1995 AIR SCW 4100, (1995) 34 DRJ 426, (1995) 58 DLT 339, 1996 (1) ALL WC 208, 1995 SCC(CRI) 1059, 1995 CRILR(SC&MP) 724, 1995 (2) EASTCRIC 706, 1995 (3) CHANDCRIC 147, 1995 (4) CURCRIR 156, 1995 CRIAPPR(SC) 377, (1996) 1 SCCRIR 269, 1996 APLJ(CRI) 5.2, (1995) 7 JT 299 (SC), 1995 CRILR(SC MAH GUJ) 724, 1996 (1) BLJR 99, (1996) ILR (KANT) 344, 1996 CHANDLR(CIV&CRI) 235, (1995) 4 CRIMES 171, (1995) 2 KER LT 830, (1995) 2 OCR 602, (1995) 2 ORISSA LR 597, (1995) 32 ALLCRIC 786, (1995) 3 ALLCRILR 383, (1995) 3 RECCRIR 700, (1995) 3 SCJ 518, (1996) 1 RAJ LW 133, (1996) 20 ALLCRIR 123

Author: M.K Mukherjee

Bench: M.K Mukherjee

PETITIONER:
MRS. RUPAN DEOL BAJAJ & ANR.

Vs.

RESPONDENT:
KANWAR PAL SINGH GILL & ANR.

DATE OF JUDGMENT12/10/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
ANAND, A.S. (J)

CITATION:
1996 AIR 309 1995 SCC (6) 194
JT 1995 (7) 299 1995 SCALE (5)670

ACT:

HEADNOTE:

JUDGMENT:

WITH CRIMINAL APPEAL NO. 1184 OF 1995

(arising out of S.L.P. (Cr.) No. 1361 of 1989) B.R. Bajaj V. State of Punjab & Ors.

JUDGMENT M.K. MUKHERJEE, J.

Special leave granted. Heard the learned counsel appearing for the parties.

These two appeals have been heard together as they arise out of one and the same incident. Facts leading to these appeals and relevant for their disposal are as under :

> On July 29, 1988, Mrs. Rupan Deol Bajaj, an Officer of the Indian Administrative Service (I.A.S) belonging to the Punjab Cadre and then working as the Special Secretary, Finance, lodged a complaint with the Inspector General of Police, Chandigarh Union Territory alleging commission of offences under Sections 341, 342, 352, 354, and 509 of the Indian Penal Code ("IPC" for short) by Mr. K.P.S. Gill, the Director General of Police, Punjab on July 18, 1988 at a dinner party. Treating that complaint as the First Information Report (FIR) a case was registered by the Central Police Station, Sector 17, Chandigarh and investigation was taken up. Thereafter on November 22, 1988, her husband Mr. B.R. Bajaj, who also happens to be a senior I.A.S. officer of the Punjab Cadre, lodged a complaint in the Court of the Chief Judicial Magistrate for the same offences, alleging, inter alia, that Mr. Gill being a high- ranking Police Officer the Chandigarh Police had neither arrested him in connection with the case registered by the Police on his wife's complaint nor conducted investigation in a fair and impartial manner and apprehending that the Police would conclude the investigation by treating the case as untraced he was filing the complaint. On receipt of the complaint the Chief Judicial Magistrate transferred it to a Judicial Magistrate for disposal and the latter, in view of the fact that an investigation by the Police was in progress in relation to the same offences, called for a report from the Investigating Officer in accordance with Section 210 of Code of Criminal Procedure ("Cr.P.C." for short). In the meantime - on December 16, 1988 to be precise - Mr. Gill moved the High Court by filing a petition under Section 482 Cr. P.C. for quashing the F.I.R. and the complaint. On that petition an interim order was passed staying the investigation into the F.I.R. lodged by Mrs. Bajaj, but not the proceedings initiated on the complaint of Mr. Bajaj. Resultantly, the learned Judicial Magistrate proceeded with the complaint case and examined the complainant and the witnesses produced by him. Thereafter, Mr. Bajaj moved an application before the learned Magistrate for summoning Mr. Y.S. Ratra, an I.A.S. Officer of the Government of Punjab and Mr. J.F. Rebeiro, Adviser to the Governor of Punjab for being examined as witnesses on his behalf and for producing certain documents,

which was allowed. Instead of appearing personally, the above two Officers sought for exemption from appearance; and the District Attorney, after producing the documents, filed an application claiming privilege under Sections 123/124 of the Evidence Act in respect of them. The learned Magistrate rejected the prayer of the above two officers and also rejected, after going through the documents, the claim of privilege, being of the opinion that the documents did not concern the affairs of the State. Assailing the order of the learned Magistrate rejecting the claim of privilege, the State of Punjab filed a Criminal Revision Petition which was allowed by the High Court by its Order dated January 24, 1989. The petition earlier filed by Mr. Gill under Section 482 Cr. P.C. came up for hearing before the High Court thereafter and was allowed by its order dated May 29, 1989 and both the F.I.R. and the complaint were quashed. The above two orders of the High Court are under challenge in these appeals at the instance of Mr. and Mrs. Bajaj. Of the two appeals we first proceed to consider the merits of the one preferred against quashing of the F.I.R. and the complaint (arising out of SLP (Crl.) No. 2358 of 1989) for, in case it fails, the other appeal {arising out of SLP (Crl.) No. 1361 of 1989} would , necessarily, be infructuous.

On perusal of the impugned judgment we find that the following reasons weighed with the High Court in quashing the F.I.R.:-

(i) the allegations made therein do not disclose any cognizable offence;

(ii) the nature of harm allegedly caused to Mrs. Bajaj did not entitle her to complain about the same in view of Section 95 IPC;

(iii) the allegations are unnatural and improbable;

(iv) the Investigating Officer did not apply his mind to the allegations made in the F.I.R., for had he done so, he would have found that there was no reason to suspect commission of a cognizable offence, which was the `sine qua non' for starting an investigation under Section 157 Cr. P.C.; and

(v) there was unreasonable and unexplained delay of 11 days in lodging the F.I.R.

As regards the complaint of Mr. Bajaj, the High Court observed that the allegations were almost identical with some improvements made therein.

Mrs. Indira Jaisingh, the learned counsel appearing in support of the appeals strongly criticised the impugned judgment and contended that in exercise of its powers under Section 482 Cr. P.C., the High Court should not have interferred with the statutory powers of the police to investigate into cognizable offences and quashed the F.I.R. specially when the allegations made in the F.I.R. unmistakably constituted offences under the Indian Penal Code and that this unjustifiable interference was in clear violation of the principles laid down by this Court in a number of decisions.

She next contended that the finding of the High Court that the allegations made in the F.I.R. attracted the provisions of Section 95 IPC was patently wrong as in a case where the modesty of a woman is involved, the said section cannot have any manner of application. She next contended that the story given out in the F.I.R. was neither improbable nor unreliable as the High Court thought of. As regards the delay in lodging the F.I.R., Mrs. Jaisingh submitted that a satisfactory explanation for the delay had been given in the F.I.R. itself. This apart, she submitted, the delay of 11 days in lodging an F.I.R., could not, by any stretch of imagination, be made a ground for quashing it. She lastly submitted that the High Court was wholly unjustified in taking exception to the police officer's registering the F.I.R. and initiating the investigation for, once it was found that the F.I.R. disclosed cognizable offence, it was the statutory obligation of the police to investigate into the same. According to Mrs. Jaisingh. the High Court committed grave injustice and illegality by quashing the F.I.R. and the complaint.

Mr. Tulsi, the learned Additional Solicitor General, appearing for Mr. Gill on the other hand submitted that the impugned judgment of the High Court was a well considered and well reasoned one so far as it held that the F.I.R. did not disclose any cognizable offence, that the allegations made therein being trivial attracted the provisions of Section 95 IPC and that the allegations were improbable. He, however, in fairness, conceded that the last two reasons canvassed by the High Court to quash the F.I.R. could not be sustained.

The question under what circumstances and in what categories of cases the High Court can quash an F.I.R. or a complaint in exercise of its powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C. has had been engaging the attention of this Court for long. Indeed, the learned counsel for the parties invited our attention to some of those decisions. We need not, however, refer to them as in State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335 this Court considered its earlier decisions, including those referred to by the learned counsel, and answered the above question as under:

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 of cases by way of illustration wherein such power process of any court or otherwise to secure the 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) 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.

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 i 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."

(emphasis supplied) In the context of the reasons given by the High Court for quashing the F.I.R. and the complaint and the respective stands of the learned counsel for the parties in relation thereto, we have to ascertain whether the case presented before us comes under categories (1), (3) and (5) above. Besides, it raises the applicability of Section 95 IPC. Since the answers to the above three questions have to be found out from the F.I.R. itself we need to look into the contents thereof.

It is first stated therein that in the evening of July 18, 1988 Mrs. Bajaj accompanied by her husband had gone to the residence of Shri S.L. Kapur, a colleague of theirs, in response to an invitation for dinner. Reaching there at or about 9 P.M. they found 20/25 couples present including Mr. Gill, who had come without his wife, and some other senior Government officers (named in the F.I.R.). The party had been arranged in the lawn at the back of the house and as per tradition in Indian homes, the ladies were sitting segregated in a large semi-circle and the gentlemen in another large semi-circle with the groups facing each other. With the above preface comes Mrs. Bajaj's account of the incident in question, which reads as under:-

"Around 10.00 P.M. Dr. P.N. Chutani and Shri K.P.S. Gill walked across to the circle of the ladies and joined them occupying the only two vacant chairs available, almost on opposite sides of the semi-circle. Shri K.P.S. Gill took a vacant chair about 5 to 6 chairs to the left of where I was sitting. Slowly, all the ladies sitting to the right and left of him, got up, and started leaving and going into the house. I was talking to Mrs. Bijlani and Mrs. K.P. Bhandari, sitting on my right, and did not notice, or come to know, that those ladies were getting up and vacating their chairs because he had misbehaved with them. Shri K.P.S. Gill called out to me where I was sitting and said, "Mrs. Bajaj come and sit here, I want to talk to you about something." I got up from my chair to go and sit next to him. When I was about to sit down, he suddenly pulled the cane chair on which I was going to sit close to his chair and touching his chair. I felt a little surprised. I put the chair back at its original place and about to sit down again when he repeated his action pulling the chair close to his chair. I realised that something was very wrong and without sitting down I immediately left and went back and sat in my original place between the other ladies. Mrs. Bijlani, Mrs. K.P. Bhandari, Mrs. Paramjit Singh and Mrs. Shukla Mahajan were occupying seats on my right and Mrs. Nehra was sitting to the left of me at that time.

After about 10 minutes Shri K.P.S. Gill got up from his seat and came and stood straight but so close that his legs were about four inches from my knees. He made an action with the crook of his finger asking me to stand and said, "You get up. You come along with me." I strongly objected to his behaviour and told him, "Mr. Gill How dare you! You are behaving in an obnoxious manner, go away from here". Whereupon he repeated his words like a command and said, "You get up! Get up immediately and come along with me." I looked to the other ladies, all the ladies looked shocked and speechless. I felt apprehensive and frightened, as he had blocked my way and I could not get up from my chair without my body touching his body. I then immediately drew my chair back about a foot and half and quickly got up and turned to get out of the circle through the space between mine and Mrs. Bijlani's chair. Whereupon he slapped me on the posterior. This was done in the full presence of the ladies, and guests. Mrs. Bajaj has then detailed her immediate reaction to the incident followed by the steps she took to apprise the Chief Secretary, the Adviser to the Governor and the Governor of Punjab of the incident. She concluded her narration with the following words:

"Ordinarily, my complaint to a Police Officer (Shri J.F. Ribeiro) is enough to be considered as an FIR and he had duly apprised the Governor, Punjab, and the Administrator of the Chandigarh, Union Territory, at the earliest occasion. Since I understand that the matter has not yet percolated down from the Governor to lead to the registration a case, I am formally lodging an F.I.R. with the authorities of the Chandigarh Administration lest there is any problem about jurisdiction of the Police Officer later."

Sequentially summarised the statements and allegations as contained in the earlier quoted three paragraphs of the F.I.R. would read thus:

> (i) Around 10 P.M. Dr. CHutani and Shri Gill walked across to and set in the ladies' circle;
>
> (ii) Mrs. Bajaj, who was then talking to Mrs. Bijlani and Mrs. Bhandari, was requested by Mr. Gill to come and sit near him as he wanted to talk to her about something;
>
> (iii) Responding to his such request when Mrs. Bajaj went to sit in a chair next to him Mr. Gill suddenly pulled that chair close to his chair;
>
> (iv) Felling a bit surprised, when she put that chair at its original place and was about to sit down, Mr. Gill again pulled his chair closer;
>
> (v) Realising something was wrong she immediately left the place and went back to sit with the ladies;
>
> (vi) After about 10 minutes Shri Gill came and stood in front of her so close that his legs were about 4" from her knees;
>
> (vii) He then by an action with the crook of his finger asked her to "get up immediately" and come along with him;
>
> (viii) When she strongly objected to his behaviour and asked him to go away from there he repeated his earlier command which shocked the ladies present there;
>
> (ix) Being apprehensive and frightened she tried to leave the place but could not as he had blocked her way;
>
> (x) Finding no other alternative when she drew her chair back and turned backwards, he slapped her on the posterior in the full presence of the ladies and guests.

Coming now to the moot point as to whether the above allegations constitute any or all of the offences for which the case was registered, we first turn to Section 354 and 509 IPC, both of which relate to modesty of woman. These Sections read as under:

> "354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

> "509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

Since the word `modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word `modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Ed) the meaning of the word `modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

In State of Punjab vs. Major Singh (AIR 1967 Sc 63) a question arose whether a female child of seven and a half months could be said to be possessed of `modesty' which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the `common notions of mankind' referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of `modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to `outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady - "sexual overtones"

> or not, notwithstanding.
>
> It was however strenuously urged by Mr. Tulsi, that even if it was assumed that Mr. Gill had outraged the modesty of Mrs. Bajaj still no offence under Section 354 IPC could be said to have been committed by him for the other ingredient of the offence, namely, that he intended to do so was totally lacking. He urged that the culpable intention of the offender in committing the act is the crux of the matter and not the consequences thereof. To buttress his contention he invited our attention to the following passage from the judgment of this Court in Hitendra Vishnu Thakur vs.

> State of Maharashtra (1994) 4 SCC 602: (one of us, namely Anand, J. was a party) "Thus the true ambit and scope of Section 3 (1) is that no conviction under Section 3 (1) of TADA can be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3 (1) by means of the weapons etc. as enumerated in the section and was committed with the motive as postulated by the said section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3 (1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3 (1) of TADA. To bring home a charge under Section 3 (1) of the Act, the terror or panic etc. must be actually intended with a view to achieve the result as envisasged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or creates some fear or terror in the people or a section thereof, but unless the panic, fear or terror was intended and was sought to achieve either of the objectives as envisaged in Section 3 (1), the offence would not fall stricto sensu under TADA."

It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under Section 354 IPC - an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj.

That brings us to the other offences, namely, under Sections 352, 341, 342 IPC. We need not however take notice of the offence under Section 352 IPC for the offence under Section 354 IPC includes the ingredients of the former. In other words, Section 352 IPC constitutes a minor offence in relation to the other. Regarding the offence of wrong confinement punishable under Section 342 IPC there is not any iota of material in the FIR; and so far as the offence under Section 341 IPC is concerned, the only allegation relating to the same is that Mr. Gill stood in front of Mrs. Bajaj in

such a manner that she had to move backward. From such act alone it cannot be said that he `wrongfully restrained' her within the meaning of Section 339 IPC to make him liable under Section 341 IPC.

Now that we have found that the allegations made in the FIR, prima facie, disclose offences under Section 354 and 509 IPC, we may advert to the applicability of Section 95 IPC thereto. The Section reads as follows:

> "Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm".

In dealing with the above Section in Veeda Menezes vs. Yusuf Khan (AIR 1966 SC 1773) a three Judge Bench of this Court observed that the object of framing the Section was to exclude from the operation of the Indian Penal Code those cases which from the imperfection of language may fall within the letter of the law but are not within its spirit and are considered, and for the most part dealt with by the courts, as innocent. In other words, the Section is intended to prevent penalisation of negligible wrongs or of offences of trivial character. In interpreting the expression `harm' appearing in the Section this Court said that it is wide enough to include physical injury as also injurious mental reaction. As regards the applicability of the Section in a given case, this Court observed as follows:-

> "Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury the act causes".

(emphasis supplied) Viewed in the light of the above principles we are of the opinion that Section 95 IPC has no manner of application to the allegations made in the F.I.R. On perusal of the FIR we have found that Mr. Gill, the top most official of the State Police, indecently behaved with Mrs. Bajaj, a Senior lady IAS Officer, in the presence of a gentry and inspite of her raising objections continued with his such behaviour. If we are to hold, on the face of such allegations that, the ignominy and trauma to which she was subjected to was so slight that Mrs. Bajaj, as a person of ordinary sense and temper, would not complain about the same, sagacity will be the first casualty. In that view of the matter we need not delve into the contention of Mrs. JaiSingh, - much less decide - that Section 95 IPC cannot have any manner of application to an offence relating to modesty of woman as under no circumstances can it be trivial.

In recording its third reason for quashing the FIR the High Court observed as under:

> "In the present case there were 48 more persons present; 24 ladies and equal number of gentlemen. It sounds both unnatural and unconscionable that the petitioner (Mr.

> Gill) would attempt or dare to outrage the modesty of the author of the First Information Report in their very presence inside the residential house of Financial Commissioner (Home)."

We are constrained to say that in making the above observations the High Court has flagrantly disregarded - unwittingly we presume - the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course as has been pointed out in Bhajan Lal's case (supra) an F.I.R. or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C.

The consequential direction that is to ordinarily follow from the above order is mandates to the police to investigate into the FIR and to the learned Magistrate, who was in seining of the complaint case, to proceed with it in accordance with Section 210 Cr. P.C. but then we find from the records placed before us by Mr. Sanghi, the learned counsel appearing for the Chandigarh Administration, that before the High Court was moved by Mr. Gill through his petition under Section 482 Cr.P.C. and the interim order staying investigation of the case registered on the F.I.R. was passed thereon, the police had completed the investigation and sent the papers relating thereto to the Legal Rememberancer-cum-Director of Prosecution (`LR' for short) for his opinion. After his opinion was received the investigating officer prepared the `police (final) report' on November 22, 1988 and forwarded it, through the Senior Superintendent of Police, Chandigarh Administration (S.S.P) on November 28, 1988 to the `Ilaka' Magistrate stating that the evidence on record did not substantiate the accusations of the complainant (Mrs. Bajaj). The learned Magistrate, in his turn, accepted the report on December 9, 1989 and ordered that the case be filed with accused as `untraced'. In the context of the fact that the High Court had, in the meantime quashed the F.I.R. the above order was wholly unnecessary and redundant but, now that we have revived the F.I.R. and the complaint it also revives. That necessarily means, that if we allow the above order to stand one course left open to us is, in view of our earlier findings, to direct the Magistrate to proceed with the complaint in accordance with the provisions of Section 210 (3) Cr.P.C., but having regard to the police report and the manner in which it was dealt with and ultimately accepted, we consider it necessary to set aside the order treating the police case as "untraced".

From the records we find that while forwarding the police papers to the `Ilaka' Magistrate on November 28, 1988, the S.S.P. recommended that the case might be filed `as untraced' as requested by the local police in the final report. The papers however, do not appear to have been dealt with till July 17, 1989 when the Chief Judicial Magistrate entertained an application filed by Mrs. Bajaj in connection therewith wherein she stated that in Criminal Miscellaneous Petition No. 9041-M of 1988 (registered on the petition filed by Mr. Gill under Section 482 Cr.P.C.) the State had filed an affidavit averring that the police had submitted its report under Section 173 Cr.P.C. and prayed for a

direction upon the prosecution to intimate the date of the filing of the report and give her an opportunity to inspect the same. Interestingly and surprisingly enough, the Chief Judicial Magistrate was none other than the L.R. who had earlier given the opinion that the accusations of the complainant (Mrs. Bajaj) were not substantiated from the evidence collected during investigation. Indeed, it is under the influence of the above opinion that the police report was submitted as would be evident from the report itself wherein the Investigating Officer has stated "all the statements of witnesses were sent to the L.R. who, vide letter No. LD-88/7163 dated 21.11.88, found that evidence on record do not substantiate the accusations of the complainant" (as translated into english). It is difficult to believe that the learned Chief Judicial Magistrate was not aware of the fact that he had himself opined that no case for going to the trial was made out against Mr. Gill and therefore, it was expected that in the interest of justice and fair play he would have declined to deal with the case in his capacity as the Chief Judicial Magistrate. Instead of so doing, he passed an order on that application on July 19, 1989 directing issuance of notice. This was followed by another order dated July 22, 1989 whereby he directed that the application be listed on August 8, 1989 awaiting report. On the date so fixed he passed his next order which indicates that the report was received on that day and placed on record. It is not understood, which report the learned Magistrate was referring to for if it is to be read in the context of the prayer made by Mrs. Bajaj in her application dated July 17, 1989 it would necessarily mean the `police report' but as already noticed, the affidavit filed by the State in the High Court and the prayer of the Senior Superintendent of the Police dated November 28, 1988 clearly indicate that it had been sent to the Court much earlier. It can, therefore, be legitimately inferred that the formal order regarding the receipt of the police report was belatedly made on August 8, 1989. Be that as it may, it appears that even thereafter the same learned Chief Judicial Magistrate continued to deal with the matter till September 16, 1989 when he made the following order:

> "The matter concerning State vs. K.P.S. Gill was being dealt with by me when I was Legal Remembrancer, Chandigarh Administration, Chandigarh. Accordingly, the papers produced by the prosecution alongwith all other relevant papers pending in this court are entrusted to the Court of Sh. A.K. Suri, JMIC, Chandigarh, for further proceedings in accordance with law.
>
> Sh. A.S. Chahal, advocate, who is appearing on behalf of Mrs. Rupan Deol Bajaj, complainant has been directed to appear before that court on 18.9.1989 for further proceedings. Papers be sent to that court immediately".

It passes our comprehension as to how an Officer (L.R.) who had given the opinion to submit a police report in favour of Mr. Gill could entertain the request of the police for accepting the same while acting in his judicial capacity. More surprising and disquieting is the fact that he continued to deal with the matter till he realised that it would not be appropriate on his part to go any further. We need not, however, dilate on this aspect of the matter any further for in any case the order of the transferee Magistrate on the police report cannot be sustained inasmuch as he has not given any reason whatsoever for its acceptance though, it appears, the parties were heard on that question for days together, obviously to comply with the law laid down by this Court in Bhagwant Singh vs. Commissioner of Police AIR 1985 SC 1285.

In Abhinandan Jha vs. Dinesh Mishra (AIR 1968 SC 117) the question arose whether a Magistrate to whom a report under Section 173 (1) Cr. P.C. had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet on his disagreeing with that report. In answering the question this Court first observed that the use of the words `may take cognizance of any offence' in sub-section (1) of Section 190 Cr.P.C. imports the exercise of `judicial discretion' and the Magistrate who receives the report under Section 173 Cr.P.C. will have to consider the said report and judicially take a decision whether or not to take cognizance of the offence. The Court then held, in answering the question posed before it, that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Section 156(3). It was further held that if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance thereof, notwithstanding contrary opinion of the police expressed in the report.

Since at the time of taking cognizance the Court has to exercise its judicial discretion it necessarily follows that if in a given case - as the present one - the complainant, as the person aggrieved raises objections to the acceptance of a police report which recommends discharge of the accused and seeks to satisfy the Court that a case for taking cognizance was made out, but the Court overrules such objections, it is just and desirable that the reasons therefor be recorded. Necessity to give reasons which disclose proper appreciation of the issues before the Court needs no emphasis. Reasons introduce clarity and minimise changes of arbitrariness. That necessarily means that recording of reasons will not be necessary when the Court accepts such police report without any demur from the complainant. As the order of the learned Magistrate in the instant case does not contain any reason whatsoever, even though it was passed after hearing the objections of the complainant it has got to be set aside and we do hereby set it aside. Consequent thereupon, two course are left open to us; to direct the learned Magistrate to hear the parties afresh on the question of acceptance of the police report and pass a reasoned order or to decide for ourselves whether it is a fit case for taking cognizance under Section 190 (1)

(b) Cr.P.C. Keeping in view the fact that the case is pending for the last seven years only on the threshold question we do not wish to take the former course as that would only delay the matter further. Instead thereof we have carefully looked into the police report and its accompaniments keeping in view the following observations of this Court in H.S. Bains vs. State AIR 1980 SC 1883, with which we respectfully agree:

> "The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleges that the accused is guilty of an offence under Section 307 Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under S. 324, I.P.C. only and he may take cognizance of an offence under Section 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons

> examined by them claim to be eye witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report."

(emphasis supplied) Our such exercise persuades us to hold that the opinion of the Investigating Officer that the allegations contained in the F.I.R. were not substantiated by the statements of witnesses recorded during investigation is not a proper one for we find that there are sufficient materials for taking cognizance of the offences under Sections 354 and 509 I.P.C. We, however, refrain from detailing or discussing those statements and the nature and extent of their corroboration of the F.I.R. lest they create any unconscious impression upon the trial Court, which has to ultimately decide upon their truthfulness, falsity or reliability, after those statements are translated into evidence during trial. For the self same reasons we do not wish to refer to the arguments canvassed by Mr. Sanghi, in support of the opinion expressed in the police (final) report and our reasons in disagreement thereto.

On the conclusions as above we direct the learned Chief Judicial Magistrate, Chandigarh to take cognizance upon the police report in respect of the offences under Sections 354 and 509 IPC and try the case himself in accordance with law. We make it abundantly clear that the learned Magistrate shall not in any way be influenced by any of the observations made by us relating to the facts of the case as our task was confined to the question whether a `prima facie case' to go to the trial was made out or not whereas the learned Magistrate will have to dispose of the case solely on the basis of the evidence to be adduced during the trial. Since both the offences under Sections 354 and 509 IPC are tribal in accordance with Chapter XX of the Criminal Procedure Code we direct the learned Magistrate to dispose of the case, as expeditiously as possible, preferably within a period of six months from the date of communication of this order. In view of our above directions and the provisions of Section 210 (2) Cr.P.C. the complaint case instituted by Mr. Bajaj for the self same offences loses its independent existence thereby rendering the other appeal which arose out of that case, redundant, though we are of the opinion, prima facie, that the claim of privilege, on the basis of the affidavit of the Chief Secretary, was not sustainable.

In the result the appeal No. 1183/95 arising out of SLP (Crl.) No.2358 of 1989 filed by Mr. and Mrs. Bajaj is allowed and the other appeal No.1184/95 arising out of SLP (Crl.) No.1361 of 1989 is dismissed as infructuous.

Before we part with this judgment we wish to mention that in the course of his arguments, Mr. Sanghi, suggested that the matter may be given a quietus if Mr. GIll was to express regret for his alleged misbehaviour. That is a matter for the parties to consider for the offences in question are compoundable with the permission of the Court.