

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIRENDER SINGH

MISC. CRIMINAL CASE No.62746 of 2021

BETWEEN:-

**DEEPAK THAKUR S/O KHUMAN SINGH THAKUR,
AGED ABOUT 43 YEARS, OCCUPATION
ADDITIONAL SP, C SCRB, PHQ BHOPAL, R/O EN
2/26 UPANT COLONY, CHAR IMLI, DISTRICT
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI ANIL KHARE, SENIOR COUNSEL WITH
SHRI PRIYANK AGRAWAL – ADVOCATE)***

AND

**STATE OF MADHYA PRADESH THROUGH
SPECIAL POLICE ESTABLISHMENT, BHOPAL,
DISTRICT BHOPAL (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ABHIJEET AWASTHI – SPECIAL PUBLIC PROSECUTOR)

Reserved on : 02.11.2022

Pronounced on : 19.01.2023

*This petition having been heard and reserved for orders, coming on for pronouncement this day, **Hon'ble Shri Justice Virender Singh** pronounced the following :*

ORDER

The petitioner has preferred this petition under Section 482 of CrPC for quashing the Charge Sheet No.45/2020 dated 13.07.2020 and

all consequential proceedings in Crime No.273/2015 registered against him by Police Station Special Police Establishment, Lokayukt, Bhopal for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and also under Section 120-B of IPC.

2. Succinctly stated relevant facts are that :

(i) On 12.12.2011, one Vikram Singh Rajput made a complaint to the Inspector General of Police (IGP), State Cyber Police, PHQ, Bhopal against Rini Johar and her mother Smt. Gulshan Johar alleging that they were sales representatives of a foreign-based company namely Aura Photo Cam in India. He (complainant) placed an order to purchase two aura cameras costing Rs.5,04,000/- and paid Rs.2,50,000/- through a demand draft to Smt. Gulshan Johar on 14.10.2011 which was encashed on 19.10.2011. The remaining amount of Rs.2,54,000/- was paid in cash to Ms. Rini Johar on 16.10.2011, who handed him over one camera and a handwritten receipt of payment assuring that the original receipt will be sent directly by the company from the USA. Despite repeated correspondence through e-mails, the second system and valid receipt were never delivered to him. Therefore, he made a written complaint to IGP, Cyber Crime Bhopal. This complaint was registered as Complaint No.1239/2011 and the inquiry was handed over to Lady

Head Constable Ishrat Parveen (co-accused). On inquiry, the allegation was found proved, therefore, a case being Crime No.24/2012 for the offence under Sections 420, 34 of IPC and Section 66-D of the Information Technology Act, 2000 was registered against both Rini and Gulshan Johar at State Cyber Police Station, Bhopal and investigated by the petitioner who was then posted as Deputy Superintendent of Police (DSP), State Cyber Police, Bhopal. During the investigation, a team of cyber police arrested Rini & Gulshan Johar in the said crime in Pune on 27.11.2012, brought them to Bhopal and produced them before the learned Magistrate, Bhopal who sent them to jail in judicial custody.

(ii) After getting bail for the said crime, besides the complaints made to the other authorities, they (Rini & Gulshan) made two separate complaints dated 29.12.2012 and 25.02.2013 to the Lokayukta. According to the said complaints, the petitioner demanded a sum of Rs.10 Lacs from them for discharging Smt. Gulshan Johar from the said case by filing a closure report under Section 169 of CrPC and presenting a charge sheet at the earliest against Ms Rini Johar so that she may get bail. After negotiation, he agreed to accept Rs.5 Lacs and received Rs.2.5 Lacs cash from Gulshan Johar on 15.12.2012 after she got released from jail. One of the nephews of Gulshan Johar namely Navjeet

Gadoke handed over a cheque for Rs.3.5 lacs of HDFC Bank to one of her clients namely Titus Joseph to give Rs.2.5 Lacs to the petitioner and the rest of the amount to meet out other expenses. Titus Joseph got the cheque encashed and on the instruction of the petitioner, handed over Rs.2.5 lacs to Constables Indrapal Singh and Saurabh Bhatt who accompanied him up to the bank to receive the money.

(iii) Consequent thereupon, an inquiry being Ja.Pra. (जांच प्रकरण) No.476/2012 was registered by the Lokayukta Organization and a report was called from the Director General of Police (DGP), Bhopal who, in turn, handed over the inquiry to the subordinate officials. IGP, State Cyber Police and Additional D.G.P., State Cyber Police conducted inquiries and submitted reports to the effect that the allegations made in the complaint have not been found proved. On scrutiny, it was found that these reports were based on incomplete or defective inquiries, therefore, further information was sought from the DGP but it was informed and advised that since the petitioner has been repatriated, the inquiry may be conducted by the Lokayukta Organization itself. After receiving such information, the inquiry was handed over to the Special Police Establishment, Bhopal, commonly known as Lokayukta Police.

(iv) A preliminary inquiry being Pra.Ja (प्रारम्भिक जांच) No.33/2015 was registered and inquired by V.K. Singh, Inspector, SPE Bhopal. On inquiry, the allegations made in the complaints made by Rini and Gulshan Johar were found proved, therefore, the present Crime being FIR No.273 of 2015 was registered against petitioner DSP-Deepak Thakur, Head Constable-Ishrat Parveen and Constables Indrapal Singh and Sourabh Bhatt of State Cyber Police, Bhopal and investigated.

(v) During investigation, statements of complainants Smt. Gulshan Johar, her daughter Rini Johar, Nephews Navjeet & Amit Gadoke, Titus Joseph, Shailesh Pratap Singh, Branch Manager, HDFC Bank, Bhopal, Bhanu Pratap Singh, MD, Jehan Numa Palace Hotel, Bhopal, Shivshankar @ Sanjay Gautam, proprietor Arti Travels and his driver Shajad were recorded; call details (CDR) of mobile numbers of Head Constable Ishrat Parveen, Constables Indrapal & Saurabh (co-accused) and Titus Joseph as also record of their tower location were collected.

(vi) Finding sufficient evidence to prosecute the petitioner and co-accused persons, after obtaining prosecution sanction, the SPE (Lokayukta) filed Charge Sheet No.45/2020 on 13.07.2020.

3. Quashment of the impugned charge-sheet has been sought for on the following grounds :

(i) Complaint made by Rini Johar and her mother Smt. Gulshan Johar is nothing but a counter blast to the proceedings that were initiated against them by the petitioner on the basis of the complaint made by Vikram Singh Rajput and this has been found proved in the inquiry conducted by the IGP on the instigation of Lokayukta (Preliminary Enquiry No.476 of 2012).

(ii) Prior to the inquiry conducted by the Special Police Establishment, on the instigation of the Legal Advisor, Lokayukta, two inquiries were conducted wherein allegations made by the complainants were not found proved. A letter dated 10.02.2014 to the effect was sent by IGP, State Cyber Police to the Legal Advisor and another letter dated 18.02.2013 sent by Additional DG (Cyber Police) to Additional DG (Vigilance). In both these letters, it was clearly mentioned that the allegations made by the complainants against the petitioner were not found proved and it is recommended to close the inquiry against him.

(iii) There is no evidence of demand and acceptance of illegal gratification as alleged by the complainant and in absence of these necessary ingredients, no offence, as alleged against the petitioner, is made out.

(iv) Complainant Gulshan Johar is an experienced Advocate. She did not offer any explanation for the inordinate delay in making the complaint which shows and substantiates the contention of the petitioner that the allegations are far from the truth and simply counter-blast to the action taken by the petitioner against the complainants.

(v) There are many contradictions in the different complaints made by complainants Rini and Gulshan Johar before different Authorities, which prove that the allegations are false and frivolous and have been made maliciously.

(vi) Telephonic conversation relied on by the prosecution is between Titus Joseph and co-accused Indrapal Singh and Saurabh Bhatt. The majority of these calls have been made by Titus Joseph. There are some more calls between Titus Joseph and Smt. Gulshan Johar on the same date and time when they allege to be present together at Vitthal Market.

(vii) There are clear allegations levelled against Vikram Rajput but he has neither been made accused nor has been made a witness. He has not even been testified by the prosecuting agency which shows the manner in which the investigation has been done.

(viii) Not only the petitioner but the Human Rights Commission was also of the view that the matter should be registered against the complainants.

(ix) Falsity of the matter is also reflected from the fact that Smt. Gulshan Johar stated that she had Rs.2,20,000/- in her purse, however, records of the jail go to show that Smt. Gulshan was having cash amount of Rs.2,00,590/- and not Rs.2,20,000/-.

(x) The amount which was withdrawn by Titus Joseph was used for other purposes (for payment of legal fees and for depositing as surety) and there was no demand or acceptance by the petitioner or other co-accused persons.

(xi) Rini Johar is also known as Reena Chopra and she was convicted and sentenced to two years in state prison by a Court in the United States.

4. Shri Khare, learned Senior Counsel appearing for the petitioner strenuously argued on each and every ground mentioned above and assailed entire evidence relied upon by the prosecution to frame an opinion to file the charge-sheet and submitted that all this shows that the conclusions arrived at in the inquiry/investigation conducted by the SPE are incorrect and cannot be acted upon. He referred to several documents filed by the prosecution with the charge-sheet and also the documents collected during the investigation of Crime No.24/2012 registered against the complainants and investigated by the petitioner. He referred to a letter and a few note sheets of the Human Rights Commission, MP (HRC) and submitted that HRC believed that a case against the complainants regarding cheating was made out. He further

referred to two letters (i) one dated 10.02.2014 authored by DGP, Cyber Cell, Bhopal to Legal Advisor, Lokayukta Office, Bhopal and (ii) another letter dated 18.02.2013 authored by ADGP (Cyber), Police Headquarters Bhopal to ADGP (Vigilance) stating that in inquiry, allegations made by the complainant were not found proved. He also referred to a letter dated 07.03.2013 authored by the Jail Superintendent, Central Jail Bhopal to DGP, State Cyber Police, Bhopal showing that while releasing Gulshan Johar from jail, cash of Rs.2,00,590/- seized from her at the time of her entry in the jail was returned back. It is argued that when at the time of release, she was having only Rs.2,00,590/-, then how it can be believed that she had given cash of Rs.2.5 Lacs to the petitioner. Further, a few contradictions/omissions that appeared in the police statements of witnesses recorded during the investigation have also been referred to. It is vehemently argued that no inculcating evidence, except oral allegations made by the complainants, their associates or relatives, is available on record against the petitioner. The courts are of the constant view that such allegations cannot be made on the basis of accusations of a public servant. The ld. Senior Counsel placed reliance on three pronouncements of different Division Benches of this Court rendered in (i) **Charanlal vs State of M.P.** reported in **2011 SCC Online MP 811**; (ii) **Rajesh Dubey vs State of M.P. and another : MCrC No.7892 of 2009** decided on 29.11.2010 and (iii) **Narendra Mishra vs State of M.P. and another : MCrC No.10053 of 20210** decided on 23.02.2022.

5. The Id. Senior Counsel has further placed reliance on the decisions in **Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135**, **M.K. Harshan v. State of Kerala (1996) 11 SCC 720**, **State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335**, **B. Jayaraj v. State of A.P. (2014) 13 SCC 55**, **Satvir Singh v. the State of Delhi (2014) 13 SCC 143**, **P. Satyanarayana Murthy v. State of A.P. (2015) 10 SCC 152**, **N. Vijayakumar v. State of T.N. (2021) 3 SCC 687**, **Rajiv Kumar v. State of U.P., (2017) 8 SCC 791** and **R. Sarala v. T.S. Velu (2000) 4 SCC 459**.

6. It is further argued that several irregularities committed in the investigation show that the investigation was not unbiased or impartial. He asserted that considering all the evidence collectively would show from the face of it that no case as alleged against the petitioner is made out. He reiterated that the petitioner's prosecution is nothing but a counter blast of the action taken by the petitioner against the complainants in the discharge of his official duties and that too, on the instigation of the Human Rights Commission. He further asserted that the prosecution of the petitioner is a glaring example of abuse of process of law and this Court should rectify it by quashing the impugned charge-sheet as well as entire proceedings taken pursuant thereto against him.

7. *Per contra*, Shri Awasthi, learned counsel representing the SPE supported the impugned charge-sheet. He referred to the statements of the witnesses recorded during the investigation who categorically and specifically narrated the entire incident in sequence as to how, in a purely civil matter, mother and daughter were picked up from their

house in Pune and brought to Bhopal in such a humiliating and insulting manner in flagrant violation of the law laid down by the Hon'ble Supreme Court with regard to arrest and detention of a female. He referred to paragraphs 23, 24, 25 and 27 of the judgment passed by the Hon'ble Supreme Court in a petition filed by complainant Rini Johar and another against State of M.P. reported in **Rini Johar vs State of M.P. (2016) 11 SCC 703** wherein the Supreme Court strongly condemned the conduct of the petitioner and quashed the charge-sheet filed by him in Crime No.24/2012 against the complainants and went to the extent to award compensation of Rs.5 Lacs each to both the complainants namely Rini Johar and Gulshan Johar. This alone is sufficient to show to what extent the petitioner maliciously abused his authority against the complainants just to exert pressure to achieve his object of extracting money from them. The relevant paragraphs referred to by Shri Awasthi read thus:

"23. In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practising advocate has been seriously jeopardised. Dignity, as has been held in *Charu Khurana v. Union of India*, (2015) 1 SCC 192, is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonised, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil

faith of the collective in the system. It does not require wisdom of a seer to visualise that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus-eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli: “I repeat ... that all power is a trust—that we are accountable for its exercise—that, from the people and for the people, all springs and all must exist.”

24. We are compelled to say so as liberty which is basically the splendour of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

25. Having held thus, we shall proceed to the facet of grant of compensation. The officers of the State had played with the liberty of the petitioners and, in a way, experimented with it. Law does not countenance such kind of experiments as that causes trauma and pain. ...

.....

27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in

Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, Sube Singh v. State of Haryana, (2006) 3 SCC 178, Hardeep Singh v. State of M.P., (2012) 1 SCC 748, comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000 (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised.”

8. Shri Awasthi further referred to an order dated 03.11.2016 passed by a Division Bench of this Court in MCrC No.20366 of 2015 whereby during the investigation, he obtained an order "that during the pendency of the investigation, no coercive action as regard to arrest against the petitioners be taken". This order continued till the filing of the charge-sheet. Thus, he submitted; that without applying for bail, the petitioner successfully avoided his arrest and after the filing of the charge-sheet, withdrew this petition without getting it adjudicated on merits.

9. Shri Awasthi also referred to an order dated 29.09.2021 passed in MCrC No.42817 of 2021 of a Single Bench of this Court having jurisdiction to consider bail matters, whereby his application for seeking anticipatory bail has been dismissed on merits and an order dated 22.10.2021 passed in MCrC No.49966 of 2021 passed by the same Bench whereby his subsequent anticipatory bail application was dismissed as withdrawn. He continued to demonstrate that even after dismissal of both the applications for anticipatory bail, the petitioner

never surrendered before the Court, rather preferred a petition being MCrC No.51828 of 2021 under Section 482 of CrPC before a Division Bench. In this petition, the petitioner did not disclose the fact of dismissal of his two anticipatory bail applications by the Single Bench of this Court having jurisdiction to consider the bail matters and obtained bail from the DB in a petition filed under Section 482 CrPC vide order dated 29.10.2021 without surrender and then didn't press this petition too, which was later disposed off by the Court.

10. Thus, he submitted; that neither during the investigation nor after filing of the charge sheet, the petitioner could be taken into custody, even after such stringent observations made by the Supreme Court against his conduct and despite dismissal of his both the petitions filed for seeking anticipatory bail.

11. Distinguishing the judgments cited by the Id. Senior Counsel for the petitioner, Shri Awasthi submitted that **Charanlal's** case (supra) was a trap case, tainted notes were not found in the appellant's clothes but were found in a polythene bag hanging inside the room, complainant and shadow witness admitted in their court statements that no document was prepared on the spot by the trap party and statement of Joint Collector who played a prominent role in the trap proceedings was found suspicious, therefore, the Court took a view that there was no other evidence except the uncorroborated statement of the complainant with regard to demand of illegal gratification. In **Rajesh Dubey's** case (supra), without any supporting evidence with regard to demand, acceptance and motive, the allegation made by a terminated Civil Judge

against a Tahsildar was quashed as it was not a case of the complainant that Tahsildar ever demanded any money from him but it was alleged that his Reader had demanded money for making domicile certificate. It was further found that there were other circumstances indicating that the cause of making the complaint was totally false. In **Narendra Mishra's** case (supra), FSL report established the fact that the recorded voice did not match with the voice of the petitioner-accused therein. There was no other evidence of demand or acceptance; therefore, the court quashed the charge sheet. While, it is submitted that, in the present case, the complainant and other witnesses relating to different stages of the incident have supported the prosecution case and their statements are well supported by documentary evidence like call details and tower location. Therefore, it is submitted that this is not a fit case for quashing the proceedings/charge-sheet.

12. We heard the Id. counsel of the parties at length and perused the record.

13. It would be apt to first see the law governing the field.

14. The inherent powers under Section 482 of CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself and have been dealt with elaborately in the landmark judgment rendered by Hon'ble the Supreme Court in the case of **State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335**. The Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the

court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. It has been held by the Apex Court time and again that inherent power should not be exercised to stifle a legitimate prosecution.

15. In **Bhajan Lal's** case (supra), the Supreme Court had carved out the exceptions to the general rule that normally in the exercise of powers under Section 482 Cr.P.C. the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 thereof which reads 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 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) 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.”

16. In the case of **Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1**, the caution to be exercised by the court while exercising the jurisdiction under Section 482 of CrPC has been discussed in detail. Paragraph 27 thereof reads as under:

27. 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. The Court must be careful to see that its decision in the exercise of this power is

based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they 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 proceedings at any stage.

17. In the case of **Hamida v. Rashid, (2008) 1 SCC 474**, the Hon'ble Apex Court has held that “ends of justice would be better served if the valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under section 482 at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of justice.”

18. In the case of **Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781**, the Hon'ble Apex Court has held that “inherent jurisdiction under section 482 of CrPC 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.”

19. In the case of **K.K. Singhal v. Steel Strips Ltd., 2014 (8) Supreme 449**, the Hon'ble Apex Court has held that “where prima facie

case is made out, the proceedings cannot be quashed and the application under Section 482 of CrPC cannot be allowed”.

20. As regards contradictions/omissions that appeared in the police statements of the witnesses, the Supreme Court in **Mohd. Allauddin Khan v. State of Bihar, (2019) 6 SCC 107** has held as under:

"14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during the trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."

21. Keeping in view the law laid down in the afore discussed judicial pronouncements, now we proceed to examine the evidence collected during investigation and has been filed with the charge sheet.

22. Complainant Smt. Gulshan Johar has stated in her police statement that she and her daughter were picked up by the police from their residence in Pune, were brought to Bhopal and detained in prison. The petitioner demanded Rs.10 Lacs to help them to get out of the jail. After some negotiation, he agreed for Rs.5 Lacs. At the time of release from the jail, she received back her cash seized at the time of her entry in the jail and borrowed some money from Titus Joseph and gave Rs.2.5 Lacs to the petitioner personally in his hand. He then promised to get her daughter released from jail. Thereafter, she gave remaining Rs.2.5 Lacs to constable Indrapal to further give it to the petitioner. Daughter

Rini Johar, Nephews Navjeet & Amit Gadoke, Titus Joseph, Shailesh Pratap Singh, Branch Manager, HDFC Bank, Bhopal, Bhanu Pratap Singh, MD, Jehan Numa Palace Hotel, Bhopal where the complainant and her associates stayed on the relevant dates, Shivshankar @ Sanjay Gautam, proprietor Arti Travels and his driver Shajad who supplied/drove taxi used by the complainant and her associates during their stay in Bhopal, have supported the complainant as well as different facts relevant to countenance her allegation. Further, call details (CDR) of mobile numbers of Constables Indrapal & Saurabh (co-accused) and Titus Joseph and record of their tower location showing their presence together in Vitthal Market, Bhopal where the HDFC bank is situated were also collected. It revealed the presence of Indrapal, Saurabh, Ishrat Parveen and Titus Joseph in close proximity of the place mentioned by the witnesses where Rs.3.5 Lacs were withdrawn and out of which Rs.2.5 Lacs were allegedly handed over to the constables to be further given to the petitioner. It also revealed that there was a frequent conversation between Indrapal, Saurabh, Ishrat Parveen and Titus Joseph (Indrapal-Titus 32 times, Saurabh-Titus 25 times, Ishrat Parveen-Titus 32 times). All this evidence is sufficient to show existence of a prima facie case against the petitioner.

23. The two letters dated 18.02.2013 & 10.04.2014 sent by DGP Cyber Police to Legal Adviser, Lokayukta and ADGP (Cyber) to ADGP (Vig.) (supra) relied upon by the petitioner are not part of the charge sheet and even not relied upon during the inquiry being conducted by the Lokayukta, therefore, they cannot be relied upon by this Court while

considering a petition under Section 482 of CrPC. For this reference may be made to the decision in **Rajeev Kourav v. Baisahab, (2020) 3 SCC 317**. Relevant para 8 is being reproduced herein :

8. It is no more res Integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of the process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

24. The judgments delivered in **Dilawar Balu Kurane v. State of Maharashtra, M.K. Harshan v. State of Kerala, State of Haryana v. Bhajan Lal, B. Jayaraj v. State of A.P., Satvir Singh v. State of Delhi, P. Satyanarayana Murthy v. State of A.P., N. Vijayakumar v. State of T.N., Rajiv Kumar v. State of U.P., and R. Sarala v. T.S. Velu (supra)**, relied on by the ld. Senior Counsel for the petitioner, are clearly distinguishable on facts of the present case. They all are decided on merits after completion of a full trial and speak about the necessary ingredients to constitute a particular offence and the principle to be followed in different fact situations, which do not exist in the present

case, therefore, they are not helpful to the petitioner to get the relief as sought for. **R. Sarala**'s case states about formation of an opinion to file a charge sheet is the exclusive function of investigating officer and that the Supreme Court can examine the legality of any order passed by the High Court even when the High Court refuses to recall it on the ground of the bar created under Section 362 CrPC. **Rajiv Kumar**'s case states about necessary ingredients to constitute criminal conspiracy. In **P. Satyanarayan**'s case, demand was not found proved as the complainant had died before the trial, therefore, the conviction was reversed, even when the acceptance of illegal gratification and recovery thereof was found proved. In **B. Jayaraj**'s case, the conviction was set aside considering hostility of the complainant and in absence of any other evidence, the demand was not found proved. In **Satvir Singh**, the demand and acceptance of tainted money were not found proved, therefore, the court restored the acquittal of the accused therein. In **Dilawar Balu Kurane**'s case, the Supreme Court considered the active role of the court stating that the courts are not the mouthpiece of the prosecution. It also speaks about well-settled principles that where two views are equally possible, the accused may be discharged. **M.K. Harshan** was acquitted as the money was not recovered from his possession but was recovered from his drawer in his office and there were some other contradictions. As stated above, in all these judgments, the conclusions have been arrived at after completion of the trial on merits while in the present case, the trial is yet to be started and as we have opined above, *prima facie* there exists a strong case against the

petitioner, therefore, on the basis of these judgments, the conclusion cannot be derived in favour of the petitioner.

25. In the case of **P. Vijayan v. State of Kerala (2010) 2 SCC 398**, the Hon'ble Apex Court has observed that when two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused but the Hon'ble Supreme Court has further made it clear that in assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

26. Para 45 of the decision in **Rajiv Kumar v. State of U.P. (2017) 8 SCC 791**, relied on by the petitioner himself, reads as under :

“The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is a sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. The existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself”.

(Emphasis supplied)

27. Thus, it is crystal clear that it is a settled principle of law that it is extremely difficult to adduce direct evidence to prove a criminal conspiracy. However, conduct of the petitioner and co-accused persons and other surrounding circumstances *prima facie* strongly indicate existence of conspiracy and indulgence of the petitioner therein.

28. Having regard to the well settled proposition of law and after carefully going through the materials available on the record such as police statements of the witnesses speaking about crucial step of the incident and the supporting evidence like CDR, tower location showing frequent conversation between the persons concerned at the relevant point of time, evidence regarding arrival & stay of the complainants and other witnesses in Bhopal, withdrawal of money from HDFC Bank etc. details whereof are mentioned in the facts above, this Court is of the considered opinion that in view of the specific allegations made against the petitioner of being involved in the criminal conspiracy and demanding and accepting illegal gratification from the complainants for filing closure report/charge-sheet in a crime in which he was the Investigating Officer as already mentioned above; certainly this is not a case where it can be said that continuation of the criminal prosecution against the petitioner, the cognizance of which has already been taken by the Id. trial Court, be termed as an abuse of process of the Court or it causes any failure of justice warranting interference by this Court.

29. In view whereof, we do not find any justification to quash the charge sheet dated 13.07.2020 or the proceedings against the petitioner

arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

30. The petition *sans merit* is consequently **dismissed**. However, nothing contained herein shall be construed as an expression of opinion on the merits of the case. It shall still be open to the petitioner to raise all such pleas as are available under the law during trial.

(SHEEL NAGU)
JUDGE

(VIRENDER SINGH)
JUDGE

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