M/S Neeharika, Infrastructure Pvt. ... vs The State Of Maharashtra on 13 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1918, AIRONLINE 2021 SC 192

Author: M.R. Shah

Bench: Sanjiv Khanna, M.R. Shah, Dhananjaya Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 330 OF 2021

M/s Neeharika Infrastructure Pvt. Ltd. …Appellant

Versus

State of Maharashtra and others …Respondents

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned interim order dated 28.09.2020 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition (ST) No. 2306 of 2020, by which, in an application filed by private respondent nos. 2 to 4 herein (hereinafter referred to as the 'original accused') under Article 226 of the Constitution of India r/w Section 482 Cr.P.C. with a prayer to quash the criminal proceedings being FIR No. 367/2019 dated 19.09.2019, the 15:46:27 IST Reason:

> High Court has directed that "no coercive measures shall be adopted" against the original accused in respect of the said FIR, the original complainant has preferred the present appeal.

2. That the appellant herein has lodged an FIR against respondent nos. 2 to 4 herein – original accused at Worli Police Station, Mumbai for the offences under Sections 406, 420, 465, 468, 471 and 120B of the Indian Penal Code. That the allegations against the original accused pertain to

forgery and fabrication of Board Resolution and the fraudulent sale of a valuable property Naziribagh Palace ad-measuring 111,882 sq. ft. belonging to the appellant company to one M/s Irish Hospitality Pvt. Ltd.

2.1 Apprehending their arrest in connection with the aforesaid FIR, the original accused filed anticipatory bail application before the learned trial Court under Section 438 Cr.P.C. That the learned Sessions Court, Mumbai granted interim protection from arrest to the alleged accused. That the interim protection, which was granted by the learned Sessions Court, was further extended from time to time and continued nearly for a year thereafter. That during the pendency of the anticipatory bail application pending before the learned Sessions Court, Mumbai, original accused – respondent nos. 2 to 4 herein preferred a petition before the High Court of Judicature at Bombay under Article 226 of the Constitution of India r/w Section 482 Cr.P.C. for quashing the FIR, on 17.09.2020. That the said writ petition was listed for hearing before the Division Bench of the High Court on 22.09.2020, wherein an order was passed directing the matter to be listed on 24.09.2020 before another Bench. That on 28.09.2020, the writ petition was listed for hearing before another Division Bench. Learned counsel appearing on behalf of the appellant herein (respondent no.2 before the High Court) prayed for two weeks' time to file an affidavit in reply with an additional compilation of documents. That the Division Bench granted two weeks' time to the appellant herein to file an affidavit in reply with an additional compilation of documents in the Registry on or before 12.10.2020 with copy to the other side. Liberty was granted to the original accused (writ petitioners before the High Court) to file rejoinder, if any, on or before 19.10.2020. The matter was directed to be listed on board on 28.10.2020. While adjourning the matter to 28.10.2020, the High Court has passed the impugned interim order directing that "no coercive measures shall be adopted against the petitioners (original accused – respondent nos. 2 to 4 herein) in respect of the said FIR". When the aforesaid order was being passed, learned counsel appearing on behalf of the appellant submitted that anticipatory bail application filed by the original writ petitioners before the learned Sessions Court is pending for hearing and the learned Sessions Court may get influenced by the said order and therefore the Division Bench clarified that the learned Sessions Court shall decide the anticipatory bail application on its own merits. 2.2 Feeling aggrieved and dissatisfied with the impugned interim order passed by the Division Bench of the High Court directing that "no coercive measures shall be adopted" against the original accused (writ petitioners before the High Court) in respect of the said FIR, the original complainant has preferred the present appeal.

3. Shri K.V. Vishwanathan, learned Senior Advocate has appeared on behalf of the appellant – original respondent no.2 – complainant, Shri Diljeet Ahluwalia with Shri Malak Manish Bhatt, learned Advocates have appeared on behalf of the original accused – writ petitioners – respondent nos. 2 to 4 herein and Shri Sachin Patil and Shri Rahul Chitnis, learned Advocates have appeared on behalf of the State of Maharashtra.

3.1 Shri K.V. Vishwanathan, learned Senior Advocate appearing on behalf of the appellant – original complainant has vehemently submitted that such a blanket direction of the High Court restraining the investigating officer from taking coercive measures, in the facts and circumstances of the case, was not warranted at all.

3.2 It is submitted that, as such, the original accused – respondent nos. 2 to 4 herein were already having the interim protection from the learned Sessions Court, Mumbai in the anticipatory bail application which was continued from time to time since last one year. It is submitted that, as such, the original accused were not co-operating with the investigation after having obtained the interim protection of arrest and, in fact, the investigating officer addressed a communication to the learned Sessions Court stating that the accused were not co-operating with the investigation. It is submitted that therefore thereafter and that too while enjoying the interim protection from arrest, to file an application for quashing after a period of almost one year and obtain such an order is nothing but an abuse of process.

3.3 It is submitted that, as such, no reasons whatsoever have been assigned by the High Court while passing such an interim order of "no coercive measures to be adopted/taken" against the original accused. 3.4 It is submitted that the High Court ought to have appreciated that the original accused – respondent nos. 2 to 4 herein are facing very serious charges for the offences under Sections 406, 420, 465, 468, 471 and 120B of the Indian Penal Code and, in fact, the FIR was transferred to the Economic Offences Wing and the investigation was being conducted by the Economic Offences Wing. It is submitted that, as such, the original accused were not co-operating with the investigation after having obtained the interim protection from arrest. 3.5 It is further submitted by Shri Vishwanathan, learned Senior Advocate appearing on behalf of the appellant that, as such, by issuing such a blanket direction restraining the investigating officer from taking coercive measures against the original accused, the valuable right of the investigating officer to investigate the offences has been hampered and/or taken away.

3.6 Relying upon the decision of this Court in the case of State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779, it is submitted by Shri Vishwanathan that as observed and held by this Court the powers under Section 482 Cr. P.C or under Article 226 of the Constitution of India to quash the first information report is to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. It is submitted that it is observed by this Court in the aforesaid decision that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. It is submitted that it cannot be disputed that accused cannot approach the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, as held by this Court in catena of decisions, inherent power in a matter of quashing of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. It is submitted that in the aforesaid decision it is observed and held that power under Section 482 Cr.P.C. is very wide but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court.

3.7 It is submitted that in a given case, the Court, having found that the case falls within the parameters of exercise of powers under Section 482 Cr.P.C. to quash the FIR, may pass appropriate interim orders as thought apposite in law, but even such an interim order shall be passed regard being had to the parameters of quashing and the self-restraint imposed by law. It is submitted that even in such a case the High Court has to consider the allegations made in the FIR or what has come

out in the investigation.

3.8 It is submitted that in a case the accused against whom the FIR is lodged is apprehending arrest, a remedy is available to him to file the anticipatory bail application under Section 438 Cr.P.C. It is submitted that even when the anticipatory bail application under Section 438 is filed, the same can be granted within the parameters of Section 438 Cr.P.C. and the conditions of the said provision are satisfied. It is submitted that, however, such a blanket order of no coercive steps without imposing any condition whatsoever and without satisfaction of the conditions of Section 438 Cr.P.C. is not permissible at all. 3.9 It is further submitted that, as such, by passing such a blanket order of "no coercive steps to be taken", even the valuable right of the investigating agency/police to investigate the FIR will be affected. 3.10 It is submitted that assuming that the High Court has jurisdiction to pass an interim order in a given case, regard being had to the parameters of quashing, in that case also, such interim orders cannot be passed mechanically and/or without assigning any reasons. It is submitted that while granting such a protection, even the High Court has to give some brief reasons why stay of investigation and/or such an order of "no coercive steps" is warranted. It is submitted that there must be a reflection of application of mind to the facts of the case; allegations in the FIR and what has come out in the investigation. It is submitted that, as such, when the investigation is in progress at the threshold, it is not appropriate to stay the investigation of the case. It is submitted that only in an exceptional case and rarest of rare case, the powers to quash the FIR are required to be exercised sparingly and with circumspection. It is submitted that the same parameters which shall be applicable while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/investigation shall be applicable while passing an appropriate interim order. 3.11 Shri Vishwanathan, learned Senior Advocate appearing on behalf of the appellant has relied upon the following decisions on when a High Court can grant a stay of investigation or "no coercive measures order" in exercise of its powers under Section 482 Cr.P.C./under Article 226 of the Constitution of India and in support of his submissions that (1) inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice and the statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases; (2) power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary; (3) save in exceptional case where non-interference would result in miscarriage of Justice, the Court and the judicial process should not interfere at the stage of investigation of offences; (4) in case a police officer transgresses the circumscribed limits and improperly and illegally exercises his powers in relation to the process of investigation, then the Court has the necessary powers to consider the nature and extent of the breach and pass appropriate orders; (5) 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; (6) the High Court has no inherent powers to interfere with the investigation, unless it is found that the allegations do not disclose the commission of a cognizable offence or the power of investigation is being exercised by the police malafidely; (7) the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of an offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere

to prevent abuse of the process of the Court. In support of his above submissions, learned Senior Advocate has relied upon the following decisions, namely, King- Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18; R.P. Kapur v. State of Punjab AIR 1960 SC 866; Kurukshetra University v. State of Haryana (1977) 4 SCC 451; State of A.P. v. Golconda Linga Swamy (2004) 6 SCC 522; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122; Sanapareday Maheedhar Seshagiri v. State of Andhra Pradesh (2007) 13 SCC 165; State of Andhra Pradesh v. Bajjoori Kanthaiah (2009)1 SCC 114; State of Maharashtra v. Arun Gulab Gawali (2010) 9 SCC 701; and State of Orissa v. Ujjal Kumar Burdhan (2012) 4 SCC 547.

3.12 Shri Vishwanathan, learned Senior Advocate has heavily relied upon the decision of this Court in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, on when the High Court would be justified in quashing the FIR/investigation. He has relied upon paras 60, 61, 102 and 103 respectively of the aforesaid decision.

3.13 Relying upon the decision of this Court in the case of Imtiyaz Ahmad v. State of Uttar Pradesh, (2012) 2 SCC 688, it is submitted that the power to grant stay of investigation and trial is very extraordinary power given to the High Courts and such power is to be exercised sparingly only to prevent abuse of process and to promote the ends of justice.

3.14 Shri Vishwanathan, learned Senior Advocate also relied upon the recent decision of this Court in the case of Ravuri Krishna Murthy v. The State of Telangana and others (Criminal Appeal Nos. 274-275 of 2021, decided on 05.03.2021), by which a somewhat similar order of protection of not to arrest passed while not entertaining the quashing petition under Section 482, has been set aside by this Court considering the decision of this Court in the case of Habib Abdullah Jeelani (supra). 3.15 Shri Vishwanathan, learned Senior Advocate appearing on behalf of the appellant has further submitted that in the case of Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation, (2018) 16 SCC 299, this Court has observed and held that even in a case of challenge to the framing of the charge, wherever the stay is granted by the High Court in exercise of its revisional jurisdiction or otherwise, a speaking order must be passed showing that the case was of an exceptional nature.

3.16 It is further submitted that in many of the cases it is seen that the High Court while not entertaining the quashing petitions under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and while dismissing such petitions, still grants interim protection/protection of not to arrest for a particular period or even till the report is filed under Section 173 Cr.P.C. It is submitted that the aforesaid is absolutely impermissible and such an order of not to arrest for a particular period can be said to be beyond the scope and ambit of Section 482 Cr.P.C. Once the quashing petition is dismissed, the accused may avail the remedy of approaching the trial Court and/or the concerned Court for anticipatory bail under Section 438 Cr.P.C and the same can be considered while imposing the conditions and/or having been satisfied that the conditions of grant of anticipatory bail are satisfied. It is submitted that in a given case the immediate custodial investigation is warranted and in view of such a blanket order of not to arrest, will take away the right of the investigating agency/police to investigate into the allegations in the FIR. It is submitted that as held by this Court in catena of decisions and even as per the provisions of the Cr.P.C., the

police/investigating officer has the statutory obligation to investigate into the allegations in the FIR and to find out the truth. It is submitted that therefore such a protection while dismissing the petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India is not sustainable and is wholly impermissible. It is submitted that despite such orders have been criticized by this Court in the case of Habib Abdullah Jeelani (supra), still the High Courts are passing such orders, disregarding the law laid down by this Court.

4. Shri Diljeet Ahluwalia and Shri Malak Manish Bhatt, learned Advocates appearing on behalf of the original accused – respondent nos. 2 to 4 herein have vehemently submitted that, as such, in the facts and circumstances of the case and looking to the nature of the allegations made in the FIR and the dispute which, as such, can be said to be a civil dispute, no error has been committed by the High Court in passing such an order of "no coercive steps" against respondent nos. 2 to 4 herein – original accused – original writ petitioners. 4.1 Number of submissions have been made by the learned Advocates appearing on behalf of respondent nos. 2 to 4 herein – original accused – original writ petitioners on merits and in support of their submissions that the impugned FIR is nothing but an abuse of process of law and that a civil dispute is tried to be converted into a criminal dispute, only with a view to harass respondent nos. 2 to 4 herein. However, we do not propose to deal with the case on merits and consider whether the impugned FIR is an abuse of process of law or not, as Section 482 petition is yet required to be dealt with by the High Court on merits in the pending proceedings.

4.2 Learned Advocates appearing on behalf of respondent nos. 2 to 4 herein – original accused – original writ petitioners have submitted that as held by this Court in catena of decisions, the powers possessed by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India are very wide. It is submitted that as held by this Court, the High Court may exercise its powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice. It is submitted therefore in exercise of its wholesome powers, the High Court would be justified and entitled to quash the proceedings. It is submitted that similarly the High Court would be justified and entitled to stay the further investigation and even grant an interim order of stay of arrest and/or "no coercive measures to be taken".

4.3 It is submitted that in the case of State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699, it is observed by this Court that the High Court in its inherent powers is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. 4.4 It is submitted that if the Court is of the prima facie view that further investigation or proceedings pursuant to the FIR is likely to cause unwarranted and unjustified harassment to the petitioner, the Court may grant an order of "no coercive measures" in favour of the accused. 4.5 It is further submitted by the learned Advocates appearing on behalf of respondent nos. 2 to 4 herein – original accused – original writ petitioners that powers to grant interim stay/interim relief in a quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India are akin to the powers of the civil court under Order XXXIX Rule 1 CPC, namely, prima facie case; balance of convenience and irreparable loss. It is submitted that therefore an interim injunction restraining the police from investigation consequent to the FIR can be

justified on the touchstone of balance of convenience, irreparable loss and a prima facie case.

4.6 Relying upon the decision of this Court in the case of Imtiyaz Ahmad (supra), it is submitted that the authority of the High Court to order stay of investigation pursuant to lodging of the FIR or trial in deserving cases is unquestionable. However, the learned Advocates have fairly conceded that wherever stay is granted, a speaking order must be passed showing that the case is of an exceptional nature. 4.7 It is vehemently submitted by the learned Advocates that when a criminal proceeding initiated pursuant to the FIR/complaint is nothing but an abuse of process of law and/or the same is wholly without jurisdiction or where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged or where the allegations in the FIR/complaint even if they are taken at the face value and accepted in their entirety, do not constitute the offence alleged and exceptional case being made out on the grounds mentioned by this Court in the cases of Bhajan Lal (supra); R.P. Kapur (supra); and Zandu Pharmaceutical Works Ltd. (supra), by giving brief reasons, the High Court would be justified in even staying the further investigation, by way of an interim order. It is submitted that misuse of criminal proceedings is not unknown and the criminal law cannot be set into motion as a matter of course and therefore to take away the inherent powers of the High Court would not be in the larger public interest also.

4.8 Relying upon the decision of this Court in the case of Rajiv Thapar V. Madan Lal Kapoor, (2013) 3 SCC 330, it is submitted that while exercising the powers under Section 482 Cr.P.C., the High Court is required to undertake step-wise enquiry as mentioned in para 30 of the said decision and if the answer to all the steps is in the affirmative, the High Court would be justified in quashing the criminal proceedings. It is submitted that the grounds on which the criminal proceedings can be quashed in exercise of powers under Section 482 Cr.P.C., the very grounds can be made applicable while granting stay of further investigation, pending the quashing petition under Section 482 Cr.P.C. 4.9 In support of his submissions, learned Advocates have relied upon the following decisions of this Court and various High Courts, namely, State of U.P. v. Mohammad Naim AIR 1964 SC 703; L. Muniswamy (supra); State of Andhra Pradesh v. Gourishetty Mahesh (2010) 11 SCC 226; Vijeta Gajra v. State (NCT of Delhi), (2010) 11 SCC 618; Rajiv Thapar (supra); State of Maharashtra v. Sanjay Dalmia, (2015) 17 SCC 539; Amish Devgan v. Union of India, (2021) 1 SCC 1; the decision of the Delhi High Court in Ganga Ram Hospital v. State dated 22.06.2020 in CRL.M.A. No. 7661/2020 in W.P. (CRL.) No. 921/2020; the decision of the Rajasthan High Court in Noor Taki Alias Mammu v. State of Rajasthan dated 26.02.1986 AIR 1987 RAJ 52; and decision of the Bombay High Court in Madhukar Purshottam Mondkar v. Talab Haji Hussain dated 14.01.1958 AIR 1958 BOM 406.

5. We have heard the learned counsel appearing for the respective parties at length.

6. The principal issue which arises is when and where the High Court would be justified in passing an interim order either staying the further investigation in the FIR/complaint or interim order in the nature of “no coercive steps” and/or not to arrest the accused either pending investigation by the police/investigating agency or during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India pending before the High Court?

7. While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while quashing the FIR will also be applicable while granting interim stay/protection. 7.1 The first case on the point which is required to be noticed is the decision of this Court in the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

> "(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
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> (ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.
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> (iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-

A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained." 7.2 In the case of Kurukshetra University (supra), this Court observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by

the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 Cr.P.C. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.

7.3 Then comes the celebrated decision of this Court in the case of Bhajan Lal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

> "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.
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> (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.
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> (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.
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> (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.
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> (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.
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> (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.
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> (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." 7.4 In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

"5. 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 alique concedit, conceditur et id sine quo res ipsa 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 the 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 or 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 dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the

accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 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.....

8. 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. High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. 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 cognisance 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/FIR 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 or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR 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 proceeding." 7.5 In the case of Zandu Pharmaceutical Works Ltd. (supra), in paragraph 11, this Court has observed and held as under:

"11. ... 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 premise 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." 7.6 In the case of Sanapareddy Maheedhar Seshagiri (supra), in paragraph 31, it is observed and held as under:

"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of

committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC." 7.7 In the case of Arun Gulab Gawali (supra), this Court set aside the order passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under Section 482 Cr.P.C. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paragraphs 13 and 27 to 29 has observed as under:

"13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be

> exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]) xxx xxx xxx
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> 27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law.

Ordinarily, the Court of Session is empowered to discharge an accused under Section 227 CrPC even before initiating the trial. The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 CrPC for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 CrPC, where the Court could apply the ratio of Madhavrao Jiwajirao Scindia [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709] .” 7.8 Thereafter in catena of decisions, this Court has reiterated the parameters for exercise of inherent powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India in the matter of quashing the FIR/complaint.

8. While considering the issue involved, the rights and duties of the police to investigate into cognizable offences are also required to be considered.

8.1 The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 deals with information in cognizable offence and Section 156 with investigation into such offence and under these sections the police have the statutory right to investigate into the circumstances of any alleged cognizable offence.

8.2 The Privy Council in the case of Khwaja Nazir Ahmad (supra) observed that in India, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. It is further observed that it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. It is further observed that the functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

9. When the High Court would be justified in interfering with the investigation by the police, while exercising the inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, few decisions of this Court are required to be noticed and referred to, which are as under.

9.1 In the case of State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554, this Court, after referring to the precedents including the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), has observed in paragraphs 25 and 26 as under:

> "25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad [AIR 1944 PC 18 : 1944 LR 71 IA 203, 213] where the Privy Council observed as under:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then."

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary." In the said decision, this Court also took note of the following observations made by this Court in the case of S.M. Sharma v. Bipen Kumar Tiwari, (1970) 1 SCC 653:

"It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers." 9.2 In the case of Union of India v. Prakash P. Hinduja, (2003) 6 SCC 195, in paragraph 20, it is observed and held as under:

"20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency." 9.3 In the case of Bhajan Lal (supra), it is observed and held by this Court that save in exceptional cases where non interference would result in miscarriage of justice, the court and the judicial process should not interfere at the stage of the investigation of offence. It is further observed that in a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and suspects arrested, the resort to the unusual procedure of oral applications and oral appeals and interim stay order thereon would have the effect of interfering and staying the investigation of offences by the investigating officer performing statutory duty under Cr.P.C.

9.4 In the case of Ujjal Kumar Burdhan (supra), it is observed and held by this Court that unless case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at early/premature stage of investigation.

9.5 In the case of Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728, in paragraphs 14 to 16, it is observed and held as under:

"14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. [Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]

15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

16. Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 :

1999 SCC (Cri) 304 : JT (1999) 1 SC 486] to the following effect: (SCC pp. 654-55, para 6) "Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497 : JT (1996) 2 SC 488] a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415 : JT (1996) 11 SC 175] where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole." 9.6 In the case of Supdt. of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 and in the case of State of U.P. v. Naresh, (2011) 4 SCC 324, it is observed and held by this Court that FIR is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. In paragraph 20 in the case of Tapan Kumar Singh (supra), it is observed and held as under:

20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed.

What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound

to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can." 9.7 In the case of Prakash P. Hinduja (supra), it is observed and held by this Court that the court would not interfere with the investigation or during the course of investigation which would mean from the time of lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency. 9.8 In the case of P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24, this Court while considering the powers of the investigating agency to investigate the cognizable offence, has observed in paragraphs 61, 64 to 67 as under:

> "61. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 CrPC, the Court can interfere and issue appropriate direction only when the Court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of the Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of the Criminal Procedure Code.
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> 64. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , it was held that : (SCC p. 258, para 47) "47. ... The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. ... Enough power is therefore given to the police

officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...."

65. In Dukhishyam Benupani v. Arun Kumar Bajoria [Dukhishyam Benupani v. Arun Kumar Bajoria, (1998) 1 SCC 52 : 1998 SCC (Cri) 261] , this Court held that : (SCC p. 55, para 7) "7. ... It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual...."

66. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

67. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the court to quash the proceedings where there is a clear case of abuse of power. It is a different matter that the High Court in exercise of its inherent power under Section 482 CrPC, can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code.

However, as pointed out earlier that power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter XII of the Code of Criminal Procedure requiring the interference of the High Court. In the initial stages of investigation where the Court is considering the question of grant of regular bail or pre-arrest bail, it is not for the Court to enter into the demarcated function of the investigation and collection of evidence/materials for establishing the offence and interrogation of the accused and the witnesses." 9.9 In the recent decision of this Court in the case of Skoda Auto Volkswagen India Private Limited v. State of Uttar Pradesh, 2020 SCC OnLine SC 958, it is observed in paragraph 41 as under:

"41. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmed AIR 1945 PC 18, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or

offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. In S.M. Datta v. State of Gujarat (2001) 7 SCC 659 this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta (supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. "

10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or

prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

11. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 Cr.P.C. before it and in what circumstances the High Court would be justified is a further core question to be considered.

Before passing an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the

very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove.

12. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.

13. While deprecating the grant of stay of investigation or trial by the High Courts, this Court in the case of Imtiyaz Ahmad (supra), in paragraphs 25 to 27, held as under:

> “25. Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.
>
> 26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable [see United Nations Development Programme, Access to Justice — Practice Note (2004)].
>
> 27. The present case discloses the need to reiterate that “access to justice” is vital for the rule of law, which by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of rule of law, wherein the rights and aspirations

> of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of the citizens' rights under the Constitution, in particular under Article 21."

14. A similar view has been expressed by this Court again in the case of Asian Resurfacing of Road Agency Private Limited (supra). By deprecating the interlocutory orders/stay of criminal proceedings by the High Courts, it is observed by this Court that the stay should not be considered as an incentive to cause delay in the proceedings. It is further observed that order granting stay or extending it must be a speaking order and stay not to operate long. It is further observed in the said decision that delay in a criminal trial has deleterious effect on the administration of justice in which the society has a vital interest; delay in trials affects the faith in Rule of Law and efficacy of the legal system; it affects social welfare and development; mere prima facie case is not enough; party seeking stay must be put to terms and stay should not be incentive to delay; the order granting stay must show application of mind; the power to grant stay is coupled with accountability. It is further observed that wherever stay is granted, a speaking order must be passed showing that the case was of an exceptional nature.

15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.

16. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or "no coercive steps to be taken against the accused" in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India with assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As observed hereinabove, it is the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of

blanket interim orders without assigning reasons, of not to arrest and/or "no coercive steps" would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.

The aforesaid is required to be considered from another angle also. Granting of such blanket order would not only adversely affect the investigation but would have far reaching implications for maintaining the Rule of Law. Where the investigation is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation may not be very fruitful for the simple reason that the evidence may no longer be available. Therefore, in case, the accused named in the FIR/complaint apprehends his arrest, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. and on the conditions of grant of anticipatory bail under Section 438 Cr.P.C being satisfied, he may be released on anticipatory bail by the competent court. Therefore, it cannot be said that the accused is remediless. It cannot be disputed that the anticipatory bail under Section 438 Cr.P.C. can be granted on the conditions prescribed under Section 438 Cr.P.C. are satisfied. At the same time, it is to be noted that arrest is not a must whenever an FIR of a cognizable offence is lodged. Still in case a person is apprehending his arrest in connection with an FIR disclosing cognizable offence, as observed hereinabove, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. As observed by this Court in the case of Hema Mishra v. State of Uttar Pradesh, (2014) 4 SCC 453, though the High Courts have very wide powers under Article 226, the powers under Article 226 of the Constitution of India are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. It is further observed that in entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 Cr.P.C. proceedings. It is further observed that on the other hand whenever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its powers under Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified. However, such a blanket interim order of not to arrest or "no coercive steps" cannot be passed mechanically and in a routine manner.

17. So far as the order of not to arrest and/or "no coercive steps" till the final report/chargesheet is filed and/or during the course of investigation or not to arrest till the investigation is completed, passed while dismissing the quashing petitions under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and having opined that no case is made out to quash the FIR/complaint is concerned, the same is wholly impermissible.

18. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr.P.C. In the aforesaid

case before this Court, the High Court dismissed the petition filed under Section 482 Cr.P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr.P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.

In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 Cr.P.C. to the effect that if the petitioner-accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are de hors the powers conferred under Section 438 Cr.P.C. That thereafter, this Court in paragraph 25 has observed as under:

> "25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mid that the culture of adjudication is stabilised when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."

19. We are at pains to note that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra), deprecating such orders passed by the High Courts of not to arrest during the pendency of the investigation, even when the quashing petitions under Section 482 Cr.P.C. or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.

20. In the recent decision of this Court in the case of Ravuri Krishna Murthy (supra), this bench set aside the similar order passed by the Andhra Pradesh High Court of granting a blanket order of protection from arrest, even after coming to the conclusion that no case for quashing was established. The High Court while disposing of the quashing petition and while refusing to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C. directed to complete the

investigation into the crime without arresting the second petitioner – A2 and file a final report, if any, in accordance with law. The High Court also further passed an order that the second petitioner – A2 to appear before the investigating agency as and when required and cooperate with the investigating agency. After considering the decision of this Court in the case of Habib Abdullah Jeelani (supra), this Court set aside the order passed by the High Court restraining the investigating officer from arresting the second accused.

Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C, as observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India.

21. Now so far as the legality of the impugned interim order passed by the High Court directing the investigating agency/police "not to adopt any coercive steps" against the accused is concerned, for the reasons stated hereinbelow, the same is unsustainable:

> i) that such a blanket interim order passed by the High Court affects the powers of the investigating agency to investigate into the cognizable offences, which otherwise is a statutory right/duty of the police under the relevant provisions of the Cr.P.C.;
>
> ii) that the interim order is a cryptic order;
>
> iii) that no reasons whatsoever have been assigned by the High Court, while passing such a blanket order of "no coercive steps to be adopted" by the police;
>
> iv) that it is not clear what the High Court meant by passing the order of "not to adopt any coercive steps", as it is clear from the impugned interim order that it was brought to the notice of the High Court that so far as the accused are concerned, they are already protected by the interim protection granted by the learned Sessions Court, and therefore there was no further reason and/or justification for the High Court to pass such an interim order of "no coercive steps to be adopted". If the High Court meant by passing such an interim order of "no coercive steps" directing the investigating agency/police not to further investigate, in that case, such a blanket order without assigning any reasons whatsoever and without even permitting the investigating agency to further investigate into the allegations of the cognizable offence is otherwise unsustainable. It has affected the right of the investigating agency to investigate into the cognizable offences. While passing such a blanket

order, the High Court has not indicated any reasons.

21.1 As observed and held by this Court in the case of Special Director v. Mohd. Ghulam Ghouse, (2004) 3 SCC 440 that though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which have weighed with it in granting such an extraordinary relief in the form of an interim protection.

21.2 In the case of Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles Mfg. Association, (2005) 12 SCC 454, it is observed and held by this Court that when an interim order should, particularly when that order may be impugned before the higher authority/Forum, contain reasons, however brief, in support of the grant or refusal thereof. It is further observed that in the absence of such reasons, it is virtually impossible for such higher authority/Forum to determine what persuaded the grant or refusal of relief.

21.3 In the case of Hindustan Times Limited v. Union of India, (1998) 2 SCC 242, while emphasising on giving reasons by the High Court, it is observed that necessity to provide reasons, howsoever brief, in support of the High Court's conclusions is too obvious to be reiterated. Obligation to give reasons introduces clarity and excludes or at any rate minimises the changes of arbitrariness and the higher forum can test the correctness of those reasons.

21.4 While considering the importance of the reasons to be given during the decision-making process, in the case of Kranti Associates (P) Ltd. v. Masood Ahmed, (2010) 9 SCC 496, in paragraph 47, this Court has summarised as under:

> "47. Summarising the above discussion, this Court holds:
>
> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct.

A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.” Therefore, even while passing such an interim order, in exceptional cases with caution and circumspection, the High Court has to give brief reasons why it is necessary to pass such an interim order, more particularly when the High Court is exercising the extraordinary and inherent powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. Therefore, in the facts and circumstances of the case, the High

Court has committed a grave error of law and also of facts in passing such an interim order of "no coercive steps to be adopted" and the same deserves to be quashed and set aside. Criminal Miscellaneous Petition No. 4961 of 2021

22. Criminal Miscellaneous Petition No. 4961 of 2021 has been preferred by respondent nos. 2 to 4 herein – original accused under Section 340 r/w Section 195 (1)(B), Cr.P.C. for initiating action against the appellant. It is alleged that the appellant has suppressed the vital documents/agreements and the facts and by suppressing the material documents/agreements and the facts has obtained an interim order dated 12.10.2020 from this Court, staying order dated 28.09.2020 passed by the High Court.

Number of submissions and counter submissions have been made by the learned counsel for the respective parties. However, considering the fact that the quashing petition is yet to be considered by the High Court on merits, we do not propose to entertain the present application and enter into the merits of the allegations in the present application. However, it will sufficed to say that this Court has passed an interim order dated 12.10.2020, staying order dated 28.09.2020 passed by the High Court, by giving brief reasons and even if the documents/agreements which are alleged to have been suppressed would have been there, it would not have any bearing on the interim order passed by this Court. What is weighed while passing interim order dated 12.10.2020 is very clear from the interim order dated 12.10.2020. Therefore, we close the criminal miscellaneous petition No. 4961/2021 and consequently the same stands disposed of.

Conclusions:

23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

24. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned interim order/direction contained in clause (d) of the impugned interim order dated 28.09.2020 by which the High Court has directed that "no coercive measures to be adopted" against the petitioners (respondent nos. 2 to 4 herein) in respect of FIR No. 367/2019 dated 19.09.2019, registered at Worli Police Station, Mumbai, Maharashtra (subsequently transferred to Economic Offence Wing, Unit IX, Mumbai, renumbered as C.R. No. 82/2019) is hereby quashed and set aside. However, it is made clear that we have not expressed anything on the merits of the case, more particularly the allegations in the FIR and the High Court to consider the quashing petition in accordance with law and on its own merits and considering the afore-stated observations made by this Court in the present judgment.

25. Having regard to the fact that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and other decisions, referred to hereinabove, some High Courts have continued to pass such interim orders, we direct the Registry to forward a copy of this judgment to all the High Courts to be placed before Hon'ble the Chief Justice to circulate to all the Judges of the High Courts.

……..J.
[Dr. Dhananjaya Y. Chandrachud]

…….J.
[M.R. Shah]

New Delhi;
April 13, 2021.

…….J.
[Sanjiv Khanna]