Reserved On: 29.08.2024 vs State Of Himachal Pradesh & Others on 25 October, 2024

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 677 of 2023
Reserved on: 29.08.2024
Date of Decision: 25.10.2024

Manoj Kumar & others ...P

Versus

State of Himachal Pradesh & others ..Res

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?1. Yes
For the Petitioners : Mr. Sanjeev Kumar Suri, Advocate
For the Respondents : Mr. Lokender Kutlehria, Additional Advocate General for respondents No. 1 to 3/State.

Mr. Vikas Rathore, Advocate, for respondent No.4.

Rakesh Kainthla, Judge

The petitioners have filed the present petition for quashing of F.I.R No.371 of 2022, dated 29.12.2022, registered for the commission of offences punishable under Sections 182, 195, 196, 199, 211, 467, 468, 471, 472 and 120-B, read with Section 34 of Indian Penal Code (IPC) at Police Station Nurpur, District Kangra, H.P. and the order dated 26.12.2022 passed by learned Judicial Magistrate First Class, Nurpur, District Kangra, H.P.

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Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. Briefly stated, the facts giving rise to the present petition are that the informant filed a complaint before the learned Judicial Magistrate First Class, Nurpur, District Kangra, H.P. under Section 156(3) of the Code of Criminal Procedure (Cr. P.C). It was asserted that petitioners Manoj Kumar and Renu Sharma along with one Raman Kumar and his wife Rajni Sharma sold the land of the informant and his wife located at Pathankot. The informant made a complaint to the Senior Superintendent of Police (SSP) for the registration of the F.I.R. in the year 2017. Petitioners No.1 and 2 lodged a false F.I.R. No. 326 of 2017 dated 22.10.2017 for the commission of offences punishable under Sections 420 and 506 read with Section 34 of IPC at Police Station Nurpur for pressurizing the informant to withdraw the application given by him to the SSP, Pathankot. The informant is a businessman and is residing in Dehli. He did not want to get involved in the litigation. The parties compromised the matter. Petitioners No.1 and 2 promised to pay 1,80,00,000/- as a consideration amount of the properties/land - to the informant, which was fraudulently transferred by petitioners No.1 and 2. Petitioner No.1 also executed an affidavit dated 19.03.2018. F.I.R. No. 326 of 2017, dated 20.03.2018 was compromised and a cancellation report was filed before the Court. The informant asked the petitioner to pay 1,80,00,000/- as promised by

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them but they refused to pay the amount. The informant filed an F.I.R.

No.206 of 2021, for the commission of offences punishable under Sections 417, 419, 420, 465, 467, 468, 471 and 120B of IPC dated 5.10.2021 and another F.I.R. No. 12 of 2022, dated 24.01.2022, for the commission of offences punishable under Sections 417,419, 420, 465, 467, 468, 471 and 120B of IPC against the petitioners at Police Station Sujanpur, District Pathankot (Pb). The informant obtained the certified copy from the Court of learned Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. and found that the documents filed by the petitioners for the registration of F.I.R.No.326 of 2017 were fake. The signatures of the informant, his wife, his son and his brother were forged by the petitioners. They prepared a fake letterhead of the informant's Firm and concocted a story to lodge a false F.I.R. They also put the forged signatures on the letterhead. The complainant went to the Police Station Nurpur to lodge the F.I.R. but the police refused to lodge the F.I.R. He also applied to the Superintendent of Police Kangra, H.P. An inquiry was conducted. The informant and other witnesses were associated. District Attorney Kangra gave a legal opinion that the bar of Section 195 of Cr.P.C. applied. No action was taken by the police. Hence, the complaint was filed before the Court.

3. Learned Judicial Magistrate First Class Class, Nurpur, sent the application to the police with the direction to register the F.I.R. The police registered the F.I.R. and conducted the investigation.

4. Being aggrieved from the registration of the F.I.R. the

petitioners have filed the present petition giving their version of the incident. It was asserted that the order passed by the learned Judicial Magistrate First Class, Nurupr, District Kangra, H.P. was illegal and based on the concocted facts. The provision of Section 195 of Cr.P.C. was violated. The F.I.R. was lodged by the informant to extract money from the petitioners and to put pressure upon them. Petitioner No.1 and 2 were put behind bars after the registration of F.I.R. No.206 of 2021 and F.I.R. 12 of 2022 at Police Station Pathankot (Punjab). The present F.I.R. was lodged to keep the petitioners behind the bars indefinitely. The informant had earlier pressurized the petitioner to pay him 1,00,00,000/- (Rupees One Crore). The cancellation report in F.I.R. No. 326 of 2017 was accepted by the Court due to the non-appearance of the informant. Many cases of cheating were registered against the informant. Therefore, it was prayed that the present petition be allowed and F.I.R. be ordered to be quashed.

5. The State opposed the petition by filing a reply to the petition making preliminary submissions regarding lack of

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maintainability and the petitioners having not come to the Court with clean hands. The contents of the petition were denied on merits. It was asserted that an order was received from the Court and the F.I.R. was registered. Earlier an F.I.R. No. 79 of 2020 was registered on the complaint of petitioner No.1. A cancellation report was submitted to the Court of learned Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. F.I.R. No. 371 of 2022 was registered at the

instance of the informant. The investigation was being conducted fairly by an official of the rank of Deputy Superintendent of Police. There is no abuse of the process of the law. Therefore, it was prayed that the present petition be dismissed.

6. A separate reply was filed by respondent No.4/informant making preliminary submissions regarding the existence of a prima facie case and the petitioners having concealed material facts from the Court. The contents of the petition were denied on merits. It was asserted that the petitioners have to face trial keeping in view the gravity of the allegations made against them. Many F.I.R. have been registered against the petitioners, which are pending before various Courts. This Court should not exercise the jurisdiction vested in the learned Trial Court. The F.I.R. was lodged on correct facts. It was

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denied that the informant wanted to extract money from the petitioners and it was prayed that the present petition be dismissed.

7. I have heard Mr Sanjeev Kumar Suri, learned counsel for the petitioners, Mr Lokender Kutlehria, learned Additional Advocate General for respondents No.1 to 3/State and Mr. Vikas Rathore, learned counsel for respondent No.4/informant.

8. Mr. Sanjeev Kumar Suri, learned counsel for the petitioners submitted that a false F.I.R. was registered by the informant, which is apparent from various documents annexed to the present petition. Learned Magistrate could not have taken cognizance for the commission of offences punishable under Sections

182, 195,196,199 and 211 of IPC without a complaint filed by the competent Court, therefore, he could not have ordered the registration of the F.I.R. under Section 156(3) of Cr.P.C. Hence, he prayed that the present petition be allowed and the F.I.R. be ordered to be quashed.

9. Mr. Lokender Kutlehria, learned Additional Advocate General, for respondents No. 1 to 3/State submitted that the bar of jurisdiction under Section 195 of Cr.P.C. applies to the Court taking the cognizance and does not apply to the Court ordering investigation under Section 153(3) of Cr. P.C. The contents of the complaint

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disclosed the commission of cognizable offence and F.I.R. should not be quashed at this stage. Therefore, he prayed that the present petition be dismissed.

10. Mr. Vikas Rathore, learned counsel for respondent No.4/ informant submitted that the petitioners had forged the documents and used them as genuine. This discloses a cognizable offence. The police are conducting the investigation and this Court should not exercise the jurisdiction vested in the learned Trial Court to weigh the evidence. Therefore, he prayed that the present petition be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the record carefully.

12. The law regarding the exercise of jurisdiction under Section 482 of Cr.P.C. was considered by the Hon'ble Supreme Court in A.M. Mohan v. State, 2024 SCC OnLine SC 339, wherein it was

observed: -

> "9. The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of Indian Oil Corporation v. NEPC India Limited (2006) 6 SCC 736: 2006 INSC 4521 after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:
>
> > "12. The principles relating to the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated

and reiterated by this Court in several decisions. To mention a few--Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692: 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194: 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164: 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259: 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269: 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168: 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

> (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.
>
> (ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal

proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the offence.

(v.) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

13. Similar is the judgment in Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643, wherein it was held: -

"12. We may gainfully refer to the following observations of this Court in the case of State of Haryana v. Bhajan Lal1992 Supp (1) SCC 335: 1990 INSC 363:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to

> the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and to spite him due to private and personal grudge.
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> 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

14. The present petition has to be considered as per the parameters laid down by the Hon'ble Supreme Court.

15. There is force in the submissions of learned Additional Advocate General for respondents No. 1 to 3/State that the bar under Section 195 of Cr.P.C. applies only at the stage of taking cognizance and does not apply while ordering the investigation under Section 156(3) of Cr.P.C. It was laid down by the Hon'ble Supreme Court in M. Narayandas v. State of Karnataka, (2003) 11 SCC 251: 2004 SCC (Cri) 118:

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2003 SCC OnLine SC 1045 that the provisions of Section 195 of the CrPC do not affect the power of the police to investigate cognisable offences. It was observed at page 258:

> "8. We are unable to accept the submissions made on behalf of the respondents. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus, such a ground could not

be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh [(1998) 2 SCC 391: 1998 SCC (Cri) 642]. In this case, it has been held as follows: (SCC pp. 391-92, para 2)

> "2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging the commission of offences under Sections 419, 420, 467 and 468 IPC by them in the course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of an investigation into the same by the police. From a plain reading of Section 195 CrPC, it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is, of course, true that upon the charge sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be

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> competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy [(1983) 4 SCC 240: 1983 SCC (Cri) 822: AIR 1983 SC 1053] on which the High Court relied, has no manner of application to the facts of the instant case for their cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 CrPC."

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to

> investigate under the Criminal Procedure Code. Once the investigation is completed then the embargo in Section 195 would come into play and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during the investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed. Thus, no right of the respondents, much less the right to file an appeal under Section 341, is affected."

16. It was held by Allahabad High Court in Subhash Chand Sharma v. State of U.P., 2010 SCC OnLine All 4731 that the power of the Magistrate to order investigation under Section 156(3) of CrPC is not fettered by Section 195 of CrPC. It was observed:

> "The learned Magistrate has merely directed the police to register and investigate the matter and did not take cognizance of the offences. The provisions of section 195 Cr.P.C. are attracted only at the stage of taking cognizance of an offence by the Magistrate and not at the stage of passing an order under section 156(3) Cr.P.C. Therefore, the provisions of section 195 Cr.P.C. cannot be invoked at the stage of registration of an F.I.R. or passing of an order under section 156(3) Cr.P.C."

17. It was held in Jayant v. State of M.P., (2021) 2 SCC 670 : (2021) 2 SCC (Cri) 54: 2020 SCC OnLine SC 989 that bar under Section 195 of CrPC applies at the stage of taking cognisance and not the investigation. It was observed at page 604:

> 11.2. In Manohar M. Galani v. Ashok N. Advani [Manohar M. Galani v. Ashok N. Advani, (1999) 8 SCC 737: 2000 SCC (Cri) 70], when the bar under Section 195 CrPC was pressed into service and the High Court quashed [Miteshchandra Manilal v. State of Gujarat, 1997 SCC OnLine Guj 150 : (1997) 2 GLH 637] the complaint and enquiry on the basis of the FIR registered by the complainant while setting aside the order [Miteshchandra Manilal v. State of Gujarat, 1997 SCC OnLine Guj 150 : (1997) 2 GLH 637] passed by the High Court, this Court accepted the submission on behalf of the State that the bar under Section 195 CrPC can be gone into at the stage when the court takes cognizance of the offence and investigation on the basis of the

information received could not have been quashed and an investigating agency cannot be throttled at this stage from proceeding with the investigation particularly when the charges are serious and grave.

11.3. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492: (2008) 1 SCC (Cri) 471], in paras 19 to 34, it is observed and held as under: (SCC pp. 499-504)

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It

merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such an offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to the commencement of criminal proceedings. Taking cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

21. Chapter XIV (Sections 190-199) of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) thereof is material and may be quoted in extenso:

'190. Cognizance of offences by Magistrates. --(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered on this behalf under sub-section (2), may take cognizance of any offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.'

22. Chapter XV (Sections 200-203) relates to "Complaints to Magistrates" and covers cases before actual commencement of proceedings in a court or before a Magistrate. Section 200

of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on

oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the issue of the process either to inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is a prima facie case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction of the accused.

23. Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV. Section 204, whereunder process can be issued, is another material provision which reads as under:

> '204. Issue of process.--(1) If in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be--
>
> (a) a summons case, he shall issue his summons for the attendance of the accused, or
>
> (b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
>
> (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
>
> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

> (4) When by any law for the time being in force any

process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.'

24. From the above scheme of the Code, in our judgment, it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For the commencement of proceedings, there must be initiation of proceedings. In other words, the initiation of proceedings must precede the commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court [Videocon International Ltd. v. S.K. Sinha, 2006 SCC OnLine Bom 1555], in our considered view, was not right in equating the initiation of proceedings under Chapter XIV with the commencement of proceedings under Chapter XVI.

25. Let us now consider the question in light of judicial pronouncements on the point.

26. In Legal Remembrancer v. Abani Kumar Banerji [Legal Remembrancer v. Abani Kumar Banerji, 1950 SCC OnLine Cal 49: AIR 1950 Cal 437], the High Court of Calcutta had an occasion to consider the ambit and scope of the phrase "taking cognizance" under Section 190 of the Code of Criminal Procedure, 1898 which was in pari materia with Section 190 of the present Code of 1973. Referring to various decisions, Das Gupta, J. (as his Lordship then was) stated: (AIR p. 438, para 7)

'7. ... What is "taking cognizance" has not been defined in the Criminal Procedure Code, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) CrPC, he must not only have applied his mind to the contents of

the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter, proceeding under Section 200, and thereafter sending it for enquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e.g. ordering an investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have

taken cognizance of the offence.'

27. R.R. Chari v. State of U.P. [R.R. Chari v. State of U.P., 1951 SCC 250: AIR 1951 SC 207] was probably the first leading decision of this Court on the point. There, the police, having suspected the appellant-accused to be guilty of offences punishable under Sections 161 and 165 of the Penal Code (IPC) as also under the Prevention of Corruption Act, 1947, applied to the District Magistrate, Kanpur to issue a warrant of arrest on 22-10-1947. The warrant was issued on the next day and the accused was arrested on 27-10-1947.

28. On 25-3-1949, the accused was produced before the Magistrate to answer the charge sheet submitted by the prosecution. According to the accused, on 22-10-1947, when a warrant for his arrest was issued by the Magistrate, the Magistrate was said to have taken cognizance of the offence and since no sanction of the Government had been obtained before that date, initiation of proceedings against him was unlawful. The question before the Court was as to when cognizance of the offence could be said to have been taken by the Magistrate under Section 190 of the Code. Considering the circumstances under which "cognizance of offence" under sub-section (1) of Section 190 of the Code can be taken by a Magistrate and referring to Abani Kumar Banerji [Legal Remembrancer v. Abani Kumar Banerji, 1950 SCC OnLine Cal 49: AIR 1950 Cal 437], the Court, speaking through Kania, C.J.

stated: (Chari case [R.R. Chari v. State of U.P., 1951 SCC 250: AIR 1951 SC 207], AIR p. 208, para 3) 2024:HHC:10290 '3. It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in CrPC on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process. It is important to remember that in respect of any cognizable offence, the police, at the initial stage when they are investigating the matter, can arrest a person without obtaining an order from the Magistrate. Under Section 167(b) CrPC the police have of course to put up the person so arrested before a Magistrate within 24 hours and obtain an order of remand to police custody for the purpose of further investigation, if they so desire. But they have the power to arrest a person for the purpose of investigation without approaching the Magistrate first. Therefore, in cases of cognizable offence before proceedings are initiated and while the matter is under investigation by the police the suspected person is liable to be arrested by the police without an order by the Magistrate.'

29. Approving the observations of Das Gupta, J. in Abani Kumar Banerji [Legal Remembrancer v. Abani Kumar Banerji, 1950 SCC OnLine Cal 49: AIR 1950 Cal 437], this Court held that it was on 25-3-1949 when the Magistrate issued a notice under Section 190 of the Code against the accused that he took "cognizance" of the offence. Since before that day, sanction had been granted by the Government, the proceedings could not be said to have been initiated without the authority of law.

30. Again, in Narayandas Bhagwandas Madhavdas v. State of W.B. [Narayandas Bhagwandas Madhavdas v. State of W.B., AIR 1959 SC 1118: 1959 Cri LJ 1368], this Court observed that when cognizance is taken of an offence depends upon the facts and 2024:HHC:10290 circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuance of a search warrant for the purpose of an investigation or a warrant of arrest of the accused cannot by itself be regarded as an act of taking cognizance of an offence. It is only when a Magistrate applies his mind for proceeding under Section 200 and subsequent sections of Chapter XV or under Section 204 of Chapter XVI of the Code that it can be positively stated that he had applied his mind and thereby had taken cognizance of an offence (see also Ajit Kumar Palit v. State of W.B. [Ajit Kumar Palit v. State of W.B., AIR 1963 SC 765 : (1963) 1 Cri LJ 797] and Hareram Satpathy v. Tikaram Agarwala [Hareram Satpathy v. Tikaram Agarwala, (1978) 4 SCC 58: 1978 SCC (Cri) 496]).

31. In Gopal Das Sindhi v. State of Assam [Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986: (1961) 2 Cri LJ 39], referring to earlier judgments, this Court said: (AIR p. 989, para 7) '7. ... We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word "may" in Section 190 to mean "must". The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code.'

32. In Nirmaljit Singh Hoon v. State of W.B. [Nirmaljit Singh Hoon v. State of W.B., (1973) 3 SCC 753: 1973 SCC (Cri) 521], the Court stated that it is well settled that before a Magistrate can be said to have taken cognizance of an offence under 2024:HHC:10290 Section 190(1)(a) of the Code, he must have not only applied his mind to the contents of the complaint presented before him but must have done so for the purpose of proceeding under Section 200 and the provisions following that section. Where, however, he applies his mind only for ordering an investigation under Section 156(3) or issues a warrant for arrest of the accused, he cannot be said to have taken cognizance of the offence.

33. In Darshan Singh Ram Kishan v. State of Maharashtra [Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654: 1971 SCC (Cri) 628], speaking for the Court, Shelat, J. stated that under Section 190 of the Code, a Magistrate may take cognizance of an offence either

(a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been said, taking cognizance does not involve any formal action or indeed action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, thus, takes place at a point when a Magistrate first takes judicial notice of an offence.

34. In Devarapally Lakshminarayana Reddy v. V. Narayana Reddy [Devarapally Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252: 1976 SCC (Cri) 380], this Court said:

> (SCC p. 257, paras 13-14) '13. It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives discretion to the Magistrate in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from 2024:HHC:10290 being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.
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> 14. This raises the incidental question: What is meant by "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and
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> (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering an investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.' (See also M.L. Sethi v. R.P. Kapur [M.L. Sethi v. R.P. Kapur, AIR 1967 SC 528: 1967 Cri LJ 528].)" (emphasis supplied)
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> 12. Having heard the learned counsel for the parties and having perused the relevant provisions of the law as also the judicial pronouncements, we are of the view that the High Court has not committed any error in not quashing the order passed by the learned Magistrate and not quashing the criminal proceedings 2024:HHC:10290 for the offences under Sections 379 and 414. It is required to be noted that the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3) CrPC directed the In-

charge/SHO of the police station concerned to lodge/register the crime case/FIR and directed initiation of investigation and directed the In-charge/SHO of the police station concerned to submit a report after due investigation.

13. Applying the law laid down by this Court in the cases referred to hereinabove, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting the bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 CrPC.

14. At this stage, it is required to be noted that as per Section 21 of the MMDR Act, the offences under the MMDR Act are cognizable.

15. As specifically observed by this Court in Anil Kumar [Anil Kumar v. M.K. Aiyappa, (2013) 10 SCC 705: (2014) 1 SCC (Cri) 35], when a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage.

16. Even as observed by this Court in R.R. Chari [R.R. Chari v. State of U.P., 1951 SCC 250: AIR 1951 SC 207], even the order passed by the Magistrate ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. As observed by the Constitution Bench of this Court in A.R. Antulay [A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500: 1984 SCC (Cri) 277], filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from the filing of a complaint. Therefore, when an order is passed by the Magistrate for the investigation to be made by the police under Section 156(3) 2024:HHC:10290 of the Code, which the learned Magistrate did in the instant case when such an order is made the police are obliged to investigate the case and submit a report under Section 173(2) of the Code. That thereafter the investigating officer is required to send the report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage, the question with respect to taking cognizance by the learned Magistrate would arise.

18. It was held in Santokh Singh Chawla v. State (NCT of Delhi), 2023 SCC OnLine Del 4773 that the bar under Section 195 of CrPC does not apply to the registration of the FIR but only to the cognisance of the offence. It was observed:

> "14. There is also no dispute on the proposition that the bar under Section 195 Cr. P.C. exists only in relation to taking cognizance by Courts, and not upon registration of an FIR and the investigation by the police thereto.

> 15. In this regard, the Hon'ble Apex Court in the case of State of Punjab v. Raj Singh, (1998) 2 SCC 391 has held that the statutory power of the police to investigate cognizable offences is not barred by Section 195 Cr. P.C. Again in M. Narayandas v. State of Karnataka, (2003) 11 SCC 251 while reiterating the decision in case of Raj Singh (supra), the Hon'ble Apex Court has held as under:
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> "...Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once the investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of 2024:HHC:10290 the FIR and the material collected during the investigation provided that the procedure laid down in Section 340 Criminal Procedure Code is followed. Thus, no right of the Respondents, much less the right to file an appeal under Section 341, is affected..."

19. Therefore, the submission that the learned Magistrate could not have ordered the registration of the F.I.R. in the exercise of the jurisdiction under Section 156(3) of Cr.P.C. is not acceptable.

20. Mr. Sanjeev Kumar Suri, learned counsel for the petitioners referred to various F.I.Rs and documents annexed to the present petition to submit the contents of the F.I.R. No.371 of 2022 dated 29.12.2022 are false. This submission will not help the petitioners. It was laid down by the Hon'ble Supreme Court in MCD v.

Ram Kishan Rohtagi, (1983) 1 SCC 1: 1983 SCC (Cri) 115, that the proceedings can be quashed if on the face of the complaint and the papers accompanying the same no offence is constituted. It is not permissible to add or subtract anything. It was observed:

> "10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."

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21. Madras High Court also held in Ganga Bai v. Shriram, 1990 SCC OnLine MP 213: ILR 1992 MP 964: 1991 Cri LJ 2018, that the fresh evidence is not permissible or desirable in the proceedings under Section 482 of Cr.P.C. It was observed:

> "Proceedings under Section 482, Cr.P.C. cannot be allowed to be converted into a full-dressed trial. Shri Maheshwari filed a photostate copy of an order dated 28.7.1983, passed in Criminal Case No. 1005 of 1977, to which the present petitioner

> was not a party. Fresh evidence at this stage is neither permissible nor desirable. The respondent by filing this document is virtually introducing additional evidence, which is not the object of Section 482, Cr.P.C."

22. Andhra Pradesh High Court also took a similar view in Bharat Metal Box Company Limited, Hyderabad and Others vs. G. K. Strips Private Limited and another, 2004 STPL 43 AP, and held:

> "9. This Court can only look into the complaint and the documents filed along with it and the sworn statements of the witnesses if any recorded. While judging the correctness of the proceedings, it cannot look into the documents, which are not filed before the lower Court. Section 482 Cr.PC debars the Court to look into fresh documents, in view of the principles laid down by the Supreme Court in State of Karnataka v. M. Devendrappa and another, 2002 (1) Supreme 192. The relevant portion of the said judgment reads as follows:
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> "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 2024:HHC:10290 fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When 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 itself be the basis for quashing the proceedings".

23. A similar view was taken in Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401 wherein it was observed at page 142:

> "16. ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, based on the evidence collected during the course of the trial."

24. This position was reiterated in Supriya Jain v. State of Haryana, (2023) 7 SCC 711: 2023 SCC OnLine SC 765 wherein it was held:

> 13. All these documents which the petitioner seeks to rely on, if genuine, could be helpful for her defence at the trial but the same are not material at the stage of deciding whether quashing as prayed for by her before the High Court was warranted or not. We, therefore, see no reason to place any reliance on these three documents.

25. A similar view was taken in Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya, (2024) 2 SCC 86:

> 2024:HHC:10290 (2024) 1 SCC (Cri) 512: 2023 SCC OnLine SC 1258, wherein it was observed:
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> "63. Adverting to the aspect of the exercise of jurisdiction by the High Courts under Section 482CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, the law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by Section 482CrPC; such powers are always available to be exercised ex debito justitiae i.e. to do real and substantial justice for the administration of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in the exercise of jurisdiction under Section 482CrPC not being substantially different from the tests laid down for quashing a process issued under Section 204 read with Section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible if the justice of a given case does not overwhelmingly so demand." (Emphasis supplied)

26. Therefore, it is not permissible to look into the material filed by the petitioners with the petition and the Court has to rely upon the material brought upon the record during investigation.

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27. It was submitted that the allegations in the FIR are false.

This Court cannot determine the truthfulness or falsity of the allegations because it is a matter of trial to be adjudicated by the learned Trial Court where the matter is pending. This position was laid down in Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643 wherein it was held: -

> "13. As has already been observed hereinabove, the Court would 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 at the stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case,

> the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of Bhajan Lal (supra).
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> 14. We may gainfully refer to the observations of this Court in the case of Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home (2019) 11 SCC 706: 2018 INSC 1060:
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> "14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge sheet is filed, the petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23]. In Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23], this Court while deciding the 2024:HHC:10290 question of whether the High Court could entertain the Section 482 petition for quashing of FIR when the charge- sheet was filed by the police during the pendency of the Section 482 petition, observed : (SCC p. 63, para 16) "16. Thus, the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge [Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge- sheet, documents, etc. or not."

28. Hence, it is not permissible for the Court to go into the truthfulness or otherwise of the allegations made in the FIR.

29. The allegations in the F.I.R. clearly show that the petitioners had put the signatures of the informant, his wife, his son and his brother. They had used the letterhead of the informant. These allegations prima facie show the commission of offences punishable under Sections 465, 467 and 468 of IPC.

30. It was submitted that various F.I.R.s have been filed by the parties against each other and the present F.I.R. is a counterblast to the F.I.R. lodged by the petitioners. This submission will not help the petitioners. The F.I.R. cannot be quashed on the ground that it was filed due to the enmity. It is a matter of trial. It was laid down by the 2024:HHC:10290 Hon'ble Supreme Court in Ramveer Upadhyay v. State of U.P., 2022 SCC OnLine SC 484, that a complaint cannot be quashed because it was initiated due to enmity. It was observed:

> "30. The fact that the complaint may have been initiated by reason of political vendetta is not in itself grounds for quashing the criminal proceedings, as observed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar (1987) 1 SCC 2884. It is a

> well-established proposition of law that a criminal prosecution if otherwise justified and based upon adequate evidence, does not become vitiated on account of mala fides or political vendetta of the first informant or complainant. Though the view of Bhagwati, CJ in Sheonandan Paswan (supra) was the minority view, there was no difference of opinion with regard to this finding. To quote Krishna Iyer, J., in State of Punjab v. Gurdial Singh (1980) 2 SCC 471, "If the use of power is of the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal."

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39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such a possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute an offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In the exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case 2024:HHC:10290 No. 19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C."

31. Thus, it is impermissible to quash the FIR on the ground of enmity. Moreover, enmity is a double-edged weapon - while it furnishes the motive for false implication, it also furnishes a motive for the commission of the crime; therefore, the submission that F.I.R.

has to be quashed due to the enmity cannot be accepted.

32. No other point was urged.

33. In view of the above, the present petition fails and the same is dismissed, so also the pending applications, if any.

34. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 25th October, 2024 (ravinder)