HIGH COURT OF MADHYA PRADESH
Bench: Hon'ble Justice Gurpal Singh Ahluwalia
Date of Decision: 16th May 2024

Case No.: MISC. CRIMINAL CASE No. 16003 of 2024

APPLICANT(S):
Tamish Saluja
Smt. Ruby Saluja
Mandeep Singh Saluja . ....Applicants

VERSUS

RESPONDENT(S):

The State of Madhya Pradesh through Police Station Kareli, District Narsinghpur
Smt. Madhulika Saluja .....Respondents

Legislation:
Section 498-A read with Section 34 of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961

Subject: Application for quashment of FIR and framing of charges under Sections 498-A/34 IPC and Sections 3 & 4 of the Dowry Prohibition Act.

Headnotes:

Criminal Procedure – Quashing of FIR – The application for quashing the FIR was based on the grounds that the alleged cause of action occurred at Indore, and the FIR was lodged as a counter-blast to a divorce petition filed by the applicant. The Court held that the existence of a counter-blast motive and the different residence claims did not justify quashing the FIR as these are matters to be examined during the trial. The court cited precedents establishing that the pendency of a civil proceeding does not affect the validity of criminal proceedings [Paras 1-13].

Jurisdiction – FIR Lodgment and Investigation – It was contended that the FIR was lodged at Kareli, District Narsinghpur, where the respondent did not reside. The Court held that the jurisdiction of the FIR lodgment is valid if mental cruelty persists at the parental home, giving the local police jurisdiction to investigate. The presence of financial transactions linked to Kareli also supported jurisdiction [Paras 12-16].

Malafide Intentions – Role of Complainant’s Relatives – The applicants argued that the FIR was lodged maliciously due to the complainant's father's position as a practicing lawyer in Kareli. The Court dismissed this argument, emphasizing that the status of the complainant's relatives does not invalidate the FIR if it discloses a cognizable offence [Paras 17-20].

Territorial Jurisdiction – Transfer of FIR – The Court stated that if a Police Station lacks territorial jurisdiction, it must transfer the FIR to the appropriate

station, but this does not provide grounds to quash the FIR initially lodged [Paras 21-22].

Errors in Framing Charges – Correction Mechanism – The Court addressed an error in naming while framing charges and clarified that such errors could be corrected through an application under Section 216 of the IPC during the trial, not a ground for quashing the charges [Paras 23-25].

Decision: Application dismissed. The Court found no merit in the arguments for quashing the FIR or charges and emphasized that these matters should be addressed during the trial [Paras 27-28].

Referred Cases:

- Pratibha v. Rameshwari Devi and Others [(2007) 12 SCC 369]
- Kishan Singh (Dead) Through LRs. v. Gurpal Singh and Others [(2010) 8 SCC 775]
- Syed Askari Hadi Ali Augustine Imam and Another v. State (Delhi Administration) and Another [(2009) 5 SCC 528]
- Prem Raj v. Poonamma Menon and Another [SLP(Cr.) No. 9778/2018, decided on 02.04.2024]
- Rupali Devi v. State of U.P. [(2019) 5 SCC 384]
- Renu Kumari v. Sanjay Kumar and Others [(2008) 12 SCC 346]

Representing Advocates:

For Applicants: Shri Aditya Narayan Sharma
For Respondent: Shri Mohan Sausarkar (Government Advocate)

O R D E R

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No. 1050/2023, registered at Police Station Kareli, District Narsinghpur for offence under Section 498-A read with Section 34 of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961.

2. It is submitted by counsel for applicants that even the charges have been framed which were challenged by applicants by filing Criminal Revision No. 8/2024 and the said revision has been dismissed by 1st Additional Sessions Judge, Narsinghpur, District Narsinghpur by order dated 12.03.2024.

3. Challenging the FIR as well as framing of charges, it is submitted by counsel for applicants that the entire cause of action took place at Indore. The FIR was lodged by way of counter blast to the petition filed by applicant No. 1 for grant of divorce. The father of respondent No. 2 is residing in Kareli and is a practicing advocate at Narsinghpur, therefore, FIR has been lodged at Kareli. The respondent No. 2 is not residing at Kareli which is supported by the service report.

4. Heard learned counsel for the applicants.

Whether the FIR can be quashed on the ground of counter blast to the petition for divorce.

5. So far as the aforesaid contention of counsel for applicants is concerned, the Supreme Court in the case of **Pratibha Vs. Rameshwari Devi and Others** reported in **(2007) 12 SCC 369**, in which it has been held as under:

> **"14.** From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in *Bhajan Lal case* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted hereinabove. The High Court has drawn an adverse inference on account of the FIR being lodged on 31-12-2001 while the appellant was forced out of the matrimonial home on 25-52001.
>
> **15.** In our view, in the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-122001 on the ground that she had left the matrimonial home at least six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that Respondent 2 husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with Respondent 2 husband.
>
> **16.** It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2 husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.
>
> *****
>
> **22.** For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that the High Court in quashing the FIR in the exercise of its inherent powers under Section 482

of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the
complainant in the FIR or the complaint or not."

6. Furthermore, it is well established principle of law that the findings given by the Civil Court are not binding on the Criminal Court.

7. The Supreme Court in the case of **Kishan Singh (Dead) Through LRs. v. Gurpal Singh and Others,** reported in **(2010) 8 SCC 775** has held as under:

"16. In *Iqbal Singh Marwah* v. *Meenakshi Marwah* this Court held as under : (SCC pp. 389-90, para 32)
"*32*. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."
17. In *Syed Askari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)* this Court considered all the earlier judgments on the issue and held that while deciding the case in *Karam Chand*, this Court failed to take note of the Constitution Bench judgment in *M.S. Sheriff* and, therefore, it remains per incuriam and does not lay down the correct law. A similar view has been reiterated by this Court in *Vishnu Dutt Sharma* v. *Daya Sapra*, wherein it has been held by this Court that the decision in *Karam Chand* stood overruled in *K.G. Premshanker*.
18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

8. The Supreme Court in the case of **Syed Askari Hadi Ali Augustine Imam And Another Vs. State (Delhi Administration) and Another** reported in **(2009) 5 SCC 528** has held as under :

"24. If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidence brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in *K.G. Premshanker* v. *Inspector of Police* wherein this Court inter alia held: (SCC p. 97, paras 30-31)

"*30*. What emerges from the aforesaid discussion is—(*1*) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (*2*) in civil suits between the same parties, principle of res judicata may apply; (*3*) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (*4*) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by *A* on *B*'s property, *B* filed a suit for declaration of its title and to recover possession from *A* and suit is decreed. Thereafter, in a criminal prosecution by *B* against *A* for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of *B* over the property. In such case, *A* may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is— whether judgment, order or decree is relevant, if relevant—its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

25. It is, however, significant to notice that the decision of this Court in *Karam Chand Ganga Prasad* v. *Union of India*, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating: (*K.G. Premshanker case*, SCC p. 98, para 33)

"*33*. Hence, the observation made by this Court in *V.M. Shah case* that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in *Karam Chand case* are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in *M.S. Sheriff case* as well as Sections 40 to 43 of the Evidence Act."

Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court.

26. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision of

the Evidence Act or for that matter any other statute has been brought to our notice.

27. Another Constitution Bench of this Court had the occasion to consider a similar question in *Iqbal Singh Marwah* v. *Meenakshi Marwah* wherein it was held: (SCC p. 387, para 24)

"*24*. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (*b*)(*ii*)."

28. Relying inter alia on *M.S. Sheriff*, it was furthermore held: (*Iqbal Singh Marwah case*, SCC pp. 389-90, para 32)

"*32*. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

29. The question yet again came up for consideration in *P. Swaroopa Rani* v. *M. Hari Narayana*, wherein it was categorically held: (SCC p. 769, para 11)

"*11*. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

9. The Supreme Court in the case of **Prem Raj Vs. Poonamma Menon and Another** decided on **02.04.2024 in S.L.P.(Cr.) No.9778/2018** has held as under :

"9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance

on certain authorities of this Court. In *M/s. Karam Chand Ganga Prasad and Anr. vs. Union of India and Ors.(1970)3 SCC 694*, this Court observed that:

"…….It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

In *K.G. Premshanker vs. Inspector of Police and Anr, (2002)8 SCC 87*, a Bench of three learned Judges observed that, following the *M.S. Sheriff vs. State of Madras, AIR 1954 SC 397*, no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in *Vishnu Dutt Sharma vs. Daya Sapra (Smt.) (2009)13 SCC 729*, had observed as under:

"26. It is, however, significant to notice a decision of this Court in *Karam Chand Ganga Prasad v. Union of India (1970) 3 SCC 694*, wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein…"

This Court in *Satish Chander Ahuja vs. Sneha Ahuja (2021)1 SCC 414,* considered a numerous precedents, including *Premshanker* (supra) and *Vishnu Dutt Sharma* (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

The issue has been laid to rest by a Constitution Bench of this Court in *Iqbal Singh Marwah vs. Meenakshi Marwah, (2005)4 SCC 370* : "32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144: AIR 1954 SC 397: 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

"15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should

wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

(Emphasis Supplied)"

10. It is well established principle of law that the proceedings are to be decided on the basis of the allegations made therein.

11. If the wife with an intention to save her marital life decided not to lodge the FIR at the earliest and only after coming to know that her husband has filed a petition for divorce and, therefore, if she losses her last hope of saving her marital life and decides to lodge an FIR, then it cannot be said that if the said FIR is a product of counter blast. On the contrary, it shows that every effort was made by the wife to save her marital life and when she lost all the hopes, then she decided to lodge the FIR, then the same cannot be quashed.

Whether the respondent No. 2 is residing in Kareli or not?

12. By referring to the service report sent by the process server, it is submitted by counsel for the applicants that when the notice of divorce petition was sent to respondent No. 2 at the address of her father, then it was returned back on the ground that respondent No. 2 is residing in Indore along with her-in-laws. Even according to the applicants, the said report was false because respondent No. 2 is not residing along with the applicants in Indore. Whether the respondent No. 2 is residing in Kareli, District Narsinghpur or is residing at different place is a defence which has to be proved by the parties in the trial. *Offence under Section 498-A of IPC includes mental and physical cruelty.*

13. The Supreme Court in the case of **Rupali Devi v. State of U.P.,** reported in **(2019) 5 SCC 384** has held as under:-

"14. "Cruelty" which is the crux of the offence under Section 498-A IPC is defined in Black's Law Dictionary to mean "the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by

overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.”

14. This Court in the case of **Amar Singh vs. Smt. Vimla** decided on **22.06.2021** in **Criminal Revision No.2376/2020 (Gwalior Bench)** has held that compelling a married woman to live in her parental home amounts to cruelty.

15. If a married woman is turned out of her matrimonial house on account of non fulfillment of demand of dowry, then the wife might be residing in her parental home and physical cruelty might have come to an end but the separation on the account of demand of dowry and cruelty meted out to the wife would continue to haunt her which would amount to mental cruelty and under these circumstances, it can be said that the mental cruelty would continue even after the ousting or leaving her matrimonial house and residing in her parental home. In this case, since the respondent No. 2 has claimed that she is residing in Kareli, therefore, Police Station Kareli, has jurisdiction to investigate the matter.

16. Furthermore, the revisional Court has also found that an amount of Rs.5,00,000/- was also transferred from Kareli which also gives jurisdiction to the Police Station Kareli, District Narsinghpur. **Whether the FIR has been lodged with a malafide intentions only because of the facts that father of respondent No. 2 is a practicing lawyer at Kareli, District Narsinghpur**.

17. So far as the contention of counsel for applicants that since the father of respondent No. 2 is a practicing lawyer practicing in District Court Narsinghpur, therefore, a false report has been lodged at Kareli is concerned, the counsel for the applicants was directed to explain the meaning of his submission that the report has been lodged only at Kareli because the father

of the respondent No. 2 is a practicing lawyer. The counsel for the applicants did not elaborate his contention.

18. Even otherwise, merely because if relative of a complainant is a practicing lawyer would not make the FIR vulnerable because the Court is required to consider the allegations made in the FIR and not the status of the complainant or his/her relatives.

19. Furthermore, the Supreme Court in the case of **Renu Kumari Vs. Sanjay Kumar and others** reported in **(2008) 12 SCC 346**, after considering the law laid down by Supreme Court in the case of **Bhajan Lal (supra)** and **R.P. Kapur v. State of Punjab** reported in **AIR 1960 SC 866** has held as under:

"9. "*8*. Exercise of power under Section 482 CrPC 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 CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*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. The 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 the course of administration of justice on the principle of *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the 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 the 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 the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to

look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto. *9*. In *R.P. Kapur* v. *State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (*i*) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. 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 CrPC, 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 should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana* v. *Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

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

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

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

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' *11*. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in 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. [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. 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 the 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. [See *Dhanalakshmi* v. *R. Prasanna Kumar* [1990 Supp SCC 686 : 1991 SCC (Cri) 142], *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *State of Kerala* v. *O.C. Kuttan* [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Rashmi Kumar* v. *Mahesh Kumar Bhada* [(1997) 2 SCC 397 : 1997 SCC (Cri) 415], *Satvinder Kaur* v. *State (Govt. of NCT of Delhi)* [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and *Rajesh Bajaj* v. *State NCT of Delhi*

[(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]" The above position was again reiterated in *State of Karnataka* v. *M. Devendrappa* [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] , *State of M.P.* v. *Awadh Kishore Gupta* [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and *State of Orissa* v. *Saroj Kumar Sahoo* [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50, paras 8-11."

20. Therefore, if the complaint makes out a cognizable offence, then the *malafides* of the informant becomes secondary in nature. Accordingly this submission made by the counsel for the applicants is also rejected.

Whether the FIR can be quashed on the ground that police has no jurisdiction to register the same.

21. If any cognizable offence has been committed, then a complainant can be lodged the FIR in any Police Station and if the Police Station comes to a conclusion that it has no territorial jurisdiction to investigate the matter, then it has to transfer the FIR to the Police Station having territorial jurisdiction to investigate the same.

22. Thus, the FIR cannot be quashed only on the ground that the Police Station where the FIR has been lodged has no territorial jurisdiction to investigate the matter. Thus, the FIR cannot be quashsed on that ground.

23. It is submitted by counsel for the applicants that the trial Court while framing charge has mentioned the name of some other lady in place of name of respondent No. 2 and since the charges have been framed erroneously, therefore, they are liable to be quashed. **24.** Considered the submission made by counsel for the applicants.

25. The charges are to be framed on the basis of allegations made in the FIR. If the applicants are of the view that the trial Court has incorrectly mentioned the name of wife of applicant No.1 while framing charges, then they can always file an application for correction of charges under Section 216 of the IPC.

26. No other argument is advanced by counsel for the applicants.

27. Accordingly, no case is made out warranting interference.

28. The application fails and is hereby **dismissed**.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.