

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

CRM(M) no.115/2022

Pronounced on: 20.03.2025

Khursheed Ahmad Mahajan and another

.....Petitioner(s)

Through: Mr Shafqat Nazir, Advocate

Versus

Govt of J&K and others

.....Respondent(s)

Through: Ms Nadiya Abdullah, AC
Mr Shahbaz Sikandar, Advocate
Mr Omais Kawoos, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Petitioner prays to quash FIR no.16/2021 under Section 420, 120-B of the Indian Penal Code (IPC) registered by Crime Branch Kashmir, on the grounds mentioned in the instant petition.
2. FIR impugned has been lodged and registered on a complaint filed by one Mst. Shareefa Jan (respondent no.2 herein), alleging therein that she has paid a huge amount of Rs.66.74 Lacs to petitioners for purchase of Flat at Greater Noida. Rs.29.50 Lacs in cash had been paid to petitioner no.1; Rs.7.80 Lacs through cheques; and Rs.29.44 Lacs through bank transactions, but the Flat has not been provided to her nor the money has been returned back to her. On receipt of complaint by respondent-Crime Branch, a preliminary verification bearing No.Misc

41/2019 was initiated. It surfaced that suspect have deceived complainant.

3. It is stated in the petition that both the petitioners booked residential and commercial units (Flats), located in NCR Greater Noida, Uttar Pradesh, with M/s Earth Infrastructure Private Limited way back in the year 2013. Petitioners made initial payments towards liquidation of agreed consideration amount as part payment, which were made through bank with branch office of the company at Srinagar through respondent no.4. It is also averred that purchase of aforesaid Flats got disclosed amongst relatives of petitioners, including respondent no.3, who is living in close vicinity of complainant/respondent no.2. He approached petitioners to facilitate her booking as well. Respondent no.2 was introduced to respondent no.3 and finally respondent no.2 booked one residential flat and one commercial unit in the same project and Tower. He paid Rs.3.20 Lacs about residential unit and Rs.7.80 Lacs for commercial unit as token money in favour of company through respondent no.3. It is also stated that before buyer-seller agreements could have been drawn, respondent no.4 cautioned petitioners from depositing any further amount with Earth Infrastructure as it had not been able to commence execution of projects. Respondent no.3, however, gave another offer to petitioner to shift towards another company, namely, Jaydev Infratech Pvt. Ltd. Petitioners executed buyer-seller agreement with Jaydev Infratech Pvt. Ltd. Petitioner also informed this fact-situation to respondent no.2. Consequently, respondent no.2 also shifted towards the new company and executed buyer-seller agreement. Respondent no.2 is said to have made payment;

with respect whereof buyer-builder agreement was executed and respondent no.2 was handed over with advance monthly assured returns account payee cheques of the company in her personal name which she also encashed. According to learned counsel for petitioners, on one hand, respondent no.2 has entered into agreements with Jaydev Infratech and even received monthly dividends in the shape of assured return cheques and on the other hand she has falsely lodged complaint with respondent no.1 with an allegation of cheating and fraud against petitioners.

4. Insofar as respondent no.1 is concerned, their stand is that investigation conducted by it reveals that Rs.7.80 Lacs received from complainant through cheque has been credited by petitioner no.1 in the account of M/s Earth Infrastructure Private Limited on 27th December 2023 while as bare reading of account statement of Earth Infrastructure also confirms this transaction of Rs.7.8 Lacs.
5. An affidavit has been filed by respondent no.4, in which he states that respondent no.2 had booked one residential flat and one commercial flat. She had deposited various amounts viz. Rs.3.20 Lacs, Rs.7.80 Lacs, Rs.15.00 Lacs and Rs.15.00 Lacs either by herself or through petitioner no.2 with the office of M/s Earth Infrastructure with effect from January to the year 2015. He has declared on oath that M/s Earth Infrastructure has already transmitted the amount against two booking flats and receipts have been issued in favour of respondent no.2 and nothing remained unadjusted. However, an option was given to shift to another company, i.e., M/s Jay Dev Infratech Private Limited. Her proposal was accepted and buyer-builder agreement was executed with

her by adjusting the entire deposited amount in favour of respondent no.2. The said company even assured returns by way of cheques; some of which have even been encashed by her.

6. In their status report, it is stated by official respondents that FIR impugned was registered in view of probe conducted by Crime Branch, Kashmir, as to the allegations levelled against petitioners. It is being also stated that a written complaint was lodged by complainant, in which she stated that she sold her residential house at Gulshan Nagar Nowgam, Srinagar, so as to arrange cash worth Rs.66.74 Lacs for purchasing a residential flat and a commercial shop at Delhi on the inducement of petitioners, but neither residential flat nor commercial shop was provided to her and that petitioner in league with others grabbed her hard earned money dishonestly and fraudulently through deceitful means. Soon after registration of FIR, investigation was taken up and enquiry file was seized. During investigation, statement of complainant was recorded under Section 161 Cr.P.C. wherein she revealed to have been induced for purchase of residential flat at Delhi by petitioners on the promise of better future prospects and consistent income thereafter from the said investment till delivery of commercial shop. She further revealed that she has served in Saudi Arabia as a nurse for about ten years and on the basis of emoluments and salary obtained, she had managed to possess a residential house at Nowgam. After divorce from husband, she aspired to settle at Delhi to ensure better education of her child at Delhi and in the meanwhile, she came in touch with petitioners through their relative with whom she had intimate family relations. She was induced by petitioners to purchase residential

flat/commercial site at Delhi through them and for this purpose she sold her residential house at Nowgam to arrange requisite amount for the purpose.

7. It is being also stated by respondents that during investigation, the documentary proof of she having sold her residential house was obtained which confirmed the source of amount utilized for the purpose. Investigation further reveals that she was induced by petitioners to pay Rs.4.5 Lacs, thereafter Rs.25.00 Lacs in cash. Independent witness corroborated the payment of Rs.25.00 Lacs by complainant to petitioner in his office at Mahajan Learning Foundation located at Gojwara. However, on advice, complainant made rest of payment through bank transactions. The bank statement confirm payment of Rs.29.44 Lacs directly from complainant's account to Roshan Jahan's account. A cheque of Rs.7.80 Lacs from her account at J&K Bank Sopore was handed over by complainant to petitioner no.1 for booking of the Flat at Delhi while as said amount was transferred by petitioner no.1 to the bank account of M/s Earth Infrastructure Private Limited. As per investigation, total amount of Rs.29.50 Lacs had been obtained by petitioner no.1 in cash from complainant while as Rs.29.44 Lacs has been obtained by him from complainant through account-to-account transfer in the account of his wife. Thus, Rs. 66.74 Lacs has been invested by complainant through petitioners on the pretext of purchasing a residential flat and a commercial shop at Delhi, which has not been provided to her till date. Investigation further revealed that Rs.7.80 Lacs received from complainant had been credited by petitioner no.1 into the account of M/s Earth Infrastructure

Private Limited on 27.12.2013 but since the said firm stopped functioning due to insolvency and arrest of its few directed by Delhi Police, despite knowledge of insolvency of the said firm, petitioners induced complainant to make further payment for purchase of residential flat as well as commercial site from another building firm, namely, Jay Dev Infratech Private Limited. The documents would show total cost price of commercial site and residential flat respectively as Rs.66,42,750 plus taxes as applicable and Rs.33,16,595 plus taxes and the summary of payment received has been reflected as Rs.37,02,376/- with the medium of payment shown as Rs.5.40 Lacs form HDFC Bank through RTGS and Rs.31,62,376/- from CHQ through YTC for commercial site and Cash Payment of Rs.11,55,136/- along with YTC payment of Rs.4,23,821/- for residential flat. During investigation, the Jaydev Infratech Private Limited acknowledged payments of the complainant directly received only as mentioned in allotment letter. The total payment as per allotment letter of Jaydev Infratech Private Limited is only Rs.52,81,333/- instead of Rs.66.74 Lacs invested by complainant through petitioners while as Roshan Jahan in her representation only admits receipt of Rs.33,44,000/- from complainant for booking of flat/commercial site. Neither possession has been given nor requisite amount has been returned to the complainant, but some cheques were received by complainant on behalf of Jaydev Infrastructure Private Limited, which were bounced for deficient funds. During investigation, statement of Earth Infrastructure Private Limited revealed direct transaction of Rs.7.80 Lacs from the account of

complainant into the account of the company and no other transaction was apparent.

8. The grounds of challenge taken by the petitioners in the instant petition are that ingredients of the offences alleged are not satisfied in the light of the documentary evidence collected by the Crime Branch and therefore the offences are not made out; that the Crime Branch is guilty of suppression of material fact that the earlier complaint of respondent no.2 had been closed as P.V. no.41/2019 and no successive application of respondent no.2 was entertainable and at the most in the event of any successive complaint by the respondent no.2, another preliminary verification ought to have been instituted by the Crime Branch rather than to register a case without even any documentary proof to negate the documents supplied to the Crime Branch in 2019 itself by Shri Ashok Kumar, Director, Jaydev Infratech; that the respondent no.4 was initially the team head of Earth Infrastructure for J&K and later on she joined as head of Jaydev Infratech Pvt. Ltd.; that she has even parted with the said company because of Covid-19 and due to unknown reasons; that registration of impugned FIR has resulted in miscarriage of justice and in order to secure the ends of justice the interference of this Court is warranted; that the respondent-Crime Branch has not only to investigate the alleged element of fraud against the petitioners but it has also to investigate as to how such a huge unaccounted money was in possession of respondent no.2; that after 2014 a new financial system has been put in place whereunder it is extremely difficult for citizens to store money in cash at their respective places; that demonetization of 2016 has made the process more difficult; that the Crime Branch has

totally ignored this aspect and has simply tried to harass the petitioners who otherwise are persons of the good repute; that the petitioner no.1 is a retired Professor having served as Director in the PG Department of Management Studies in the Higher Education Department while as the petitioner no.2 is a house wife; that petitioners themselves had invested all their honest earnings including gratuity, leave salary, GP Fund of petitioner no.1 with a bona fide hope that their family would have a sigh of relief in their old age to a peaceful place in Greater Noida and would ensure the academic excellence of their two daughters pursuing the education; that petitioners have neither tendered any promise to respondent no.3 for providing possession of the booked flats nor they could do so as they themselves were sailing in the same boat; that respondent no.2 has falsely and fictitiously alleged to have deposited Rs.66.74 Lacs in the account of petitioner no.2; whatever amount had been deposited in the account of petitioner no.2 towards the booking of respondent no.2 to the tune of Rs.34.44 Lacs has in toto been deposited against her bookings in the official accounts of Earth Infrastructure and Jaydev Infratech through their respective branch and team heads; that respondent no.2 has falsely alleged to have deposited Rs.66.74 Lacs in the account of petitioner no.2, which is totally and blatantly a lie; that had there been any such payment, same would have been reflected in the bank statement of petitioner no.2 for the relevant period and in absence of any such entry and in the absence of any proof for payment of taxes etc. by respondent no.2, she cannot blame the petitioners of having been cheated or any amount not accounted for by her, has been grabbed.

9. I have heard learned counsel for parties and considered the matter. I have gone through the record produced by respondent-Crime Branch.
10. Petitioner seeks quashment of FIR no.16/2021 under Section 420, 120B IPC registered by Crime Branch Kashmir, in exercise of inherent powers under Section 482 Cr.P.C. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code/Sanhita, to prevent abuse of the process of the court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate the material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused and the court cannot look into materials, acceptability of which is essentially a matter for the trial.
11. The law on the exercise of the powers by the High Court under Section 482 Cr.P.C. to quash FIR, and the parameters for exercise of such powers, and the scope and ambit of the power by the High Court under Section 482 Cr.P.C. are required to be referred to. The Supreme Court in the case of ***R. P. Kapur v. State of Punjab, AIR 1960 SC 866***, while dealing with inherent powers of the High Court under Section 561-A of the earlier Code of Criminal Procedure (which is *pari materia* to Section 482 Cr.P.C.), observed and held that the inherent powers of the High Court cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to the quash proceedings in a proper

case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily the criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, the Supreme Court carved out some exceptions to the above-stated rule, which are as under:

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

12. The Supreme Court has observed and held that the inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to the whim or caprice; that the statutory power has to be exercised sparingly with the circumspection and in the rarest of rare cases. In the case of ***Kurukshetra University v. State of Haryana (1977) 4 SCC 451***, the High Court had quashed FIR lodged

by the Kurukshetra University in exercise of the inherent powers under Section 482 Cr.P.C. The Supreme Court observed that the High Court was not justified in quashing the FIR when the police had not even commenced the investigation into the complaint filed by the University and no proceedings were at all pending before any Court in pursuance of the FIR.

13. The Supreme Court in the celebrated case of ***State of Haryana and others v. Bhajan Lal and others***, 1992 Supp (1) SCC 335, has considered the scope and ambit of Section 482 Cr.P.C. and Article 226 of the Constitution of India in the background of quashing the proceedings in the criminal investigation. After noticing the various earlier pronouncements, the Supreme Court made certain categories of cases by way of the illustration, where the power under Section 482 Cr.P.C. can be exercised to prevent the abuse of the process of the Court or secure ends of justice. Paragraph 102, which gives seven categories of cases where power can be exercised under Section 482 Cr. P.C. are reproduced as follows:

“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 channelized 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 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. The Apex Court in another case of ***State of Andhra Pradesh v. Golconda Linga Swamy, reported in (2004) 6 SCC 522***, while dealing with the inherent powers of the High Court under Section 482 Cr. P.C., has observed as under:

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All

courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliunde concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercises of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

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7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code 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).....

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8 As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on

sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

15. Even the Apex Court in a case titled as ***State of Maharashtra v. Arun Gulab Gawali***, (2010) 9 SCC 701, set-aside the order passed by the High Court of Judicature at Bombay, by which criminal the complaint/FIR was quashed on the prayer made by the complainant himself. While quashing and setting-aside the order passed by the High Court, the Supreme Court in paras 13 and 27 to 29 held as under:

“13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can ‘soft-pedal the course of justice’ at a crucial stage of investigation/ proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as ‘Cr.P.C.’) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

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27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/Complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Sessions is empowered to discharge an accused under Section 227 Cr.P.C. even before initiating the trial. The accused can, therefore, move the Trial Court itself for such a relief and the Trial Court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 Cr.P.C. for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the Trial Court nor the Investigating Agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and

all prosecution is the social and legal responsibility of the State. An offence committed is a crime against a society and not against a victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

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

16. Thus, the Apex Court in *Arun Gulab Gawali* (supra) observed that the High Court in the said case proceeded on the perception that since complainant therein had not supported the complaint, he would not support the case of prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. The Apex Court held that quashing of FIR/complaint on such a ground could not be held to be justified in law. It was said by the Apex Court that ordinarily, the court of Sessions was empowered to discharge an accused under Section 227 Cr.P.C. even before initiating the trial. The accused could, therefore, move the Trial Court itself for such a relief and the Trial Court would be in a better position to analyse and pass an order as it was possessed of all the powers and the material to do so. It was, therefore, unnecessary to invoke jurisdiction under Section 482 Cr.P.C. to quash a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial and the presumption that an accused

would never be convicted on the material available was too risky. The Supreme Court further elaborated that a claim founded on a denial by complainant even before trial commences coupled with an allegation that police had compelled lodging of a false FIR, was a matter that required further investigation. If prosecution was quashed, then neither Trial Court nor Investigating Agency had any opportunity to go into that question, which might have required consideration. The State was the prosecutor and all prosecution was social and legal responsibility of the State. The Supreme Court also went to say that an offence committed is a crime against a society and not against a victim alone. The victim, under undue pressure or influence of the accused or under any threat or compulsion, may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

17. The power of quashing the criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court cannot be justified in embarking upon an enquiry about reliability or genuineness or otherwise of allegations made in the FIR/Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion.

18. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of the powers vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in ***Rajiv Thapar v Madan Lal Kapoor, 2013 (3) SCC 330:-***

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

- i. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
- ii. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- iii. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
- iv. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

19. The Apex Court in *State of Telangana v. Habib Abdullah Jeelani*, reported in 2017 (2) SCC 779, has held that the powers under Section 482 Cr.P.C. or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. The inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in the provision itself. The power under Section 482 Cr.P.C., is a very wide, but conferment of the wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

20.It cannot be said that a complaint does not disclose commission of offence. Merely because offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint does not warrant a trial. Whether or not allegations in complaint are true is to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly is not a case in which criminal trial should be cut short as quashing of the complaint would result in the grave miscarriage of justice. The Supreme Court in ***Nagpur Steel & Alloys (P) Ltd v. P. Radhakrishna, 1997 SCC (Cri) 1073***, after saying that restored the complaint and directed the Magistrate to proceed with the complaint.

21.The above settled position of law has also been reiterated by the Apex Court in ***Priti Saraf & anr v. State of NCT of Delhi & anr, (2021) 16 SCC 142***, and it has been held that inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint / FIR/ charge-sheet in deciding whether the case is the rarest of rare cases, to scuttle the prosecution at its inception. It has also been held by the Supreme Court whether allegations in the complaint are otherwise correct or not has to be decided on the basis of evidence to be led during the course of trial.

22. I have gone through the record produced by the respondent-Crime Branch, including Final Report. Perusal whereof reveals that during investigation it has been established that payment of Rs.66.74 Lacs had been paid by complainant to petitioners, but M/s Earth Infrastructure Limited acknowledged only payment of Rs.41.00 Lacs on account of

two bookings of petitioner while as M/s Jaydev Infratech Private Limited acknowledged direct payment of Rs.16,95,136/- and YTC payment of Rs.35,86,197 on account of payments made to Earth Infrastructure Limited on the bookings of complainant including both commercial/residential bookings. Thus, total payment acknowledged by M/s Jaydev Infratech Limited is only Rs.52,81,333/-, which depicts missing of Rs.13,92,667/- on account of payments made by complainant to petitioners for the purpose of booking in the real estate companies of Greater Noida New Delhi. It is also mentioned in final report that during investigation it has been established that petitioners acted as a conduit of the aforesaid companies in getting hefty amount from complainant on the pretext of providing residential flat/commercial unit on one side and providing 12% monthly returns on the payments made as an inducement for the said bookings but despite receiving hefty amount from complainant, they failed in keeping the promise.

23. It is also mentioned in final report that Rs.29.15 Lacs has been paid in cash by complainant to petitioners and that frequent transactions have taken place from the account of Roshan Jahan into the account of Jaydev Infratech Private Limited as well as Irfan Ali as Sales Manager of M/s Earth Infrastructure Limited and Geeta Singh as the team head, J&K, Srinagar/Vice President Sales-cum-Marketing of Earth Infrastructure Limited. However, payments of many lacs paid from the account of Roshan Jahan into the account of Geeta Singh and her mother, Rameshwari Devi, have not been admitted by officer bearers/directors of M/s Jaydev Infratech Private Limited. In fact Ms Geeta

Singh and Maheshwari Devi have not deposited in the said companies Lacs of rupees received from Roshan Jahan on behalf of complainant and thereby for her own benefit Geeta Singh has caused loss to complainant as the amount paid on behalf of complainant has not been deposited in the above said builder companies. It is also mentioned in final report that investigation has established that payment of Rs.66.74 Lacs had been made by complainant to petitioner, Khursheed Mahajan, in cash and through account of her wife Roshan Jahan, with her consent, after their inducement to complainant for investment in the abovesaid firms in order to get incentives from the company for themselves on account of making bookings on behalf of Shareefa Jan and misappropriation of Rs.13,92,667/- in conspiracy with accused no.3, Mst. Geeta Singh in her capacity as head of both companies at Srinagar, due to acknowledgement of only Rs.52,81,333/- by M/s Jaydev Infratech Private Limited instead of Rs.66.74 Lacs received from the complainant and, thus, complainant has been cheated by the accused persons by dishonest and fraudulent means knowingly and intentionally by retaining her huge amount for a very long period on false promise of providing her the possession of residential flat/commercial shop at Greater Noida New Delhi as well as assured monthly returns continuously as a means of subsistence and thereby not only caused substantial financial loss to complainant but also irreparable mental agony as well as psychological disturbances in well upbringing of her lone child.

24. When the instant petition and the contents contained therein are read in the context of the final report, the matter requires and demands full

dress trial and examination of facts by this Court as if this Court is in appeal and acting as an appellate court and to draw its own conclusion in relation to the impugned FIR, complaint and proceedings emanating therefrom. This is not the aim and objective of the provisions of Section 482 Cr. P.C. particularly when the petition on hand does not unveil any ground muchless cogent or material one, to indicate that the inherent powers are to be exercised to prevent the abuse of process of law and to secure the ends of justice. In that view of the matter, the impugned FIR does not call for any interference and as a result whereof, the instant petition is liable to be dismissed.

25. For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

26. It is made clear here that I have not adjudicated the contentions raised by petitioner in the petition and the same are left open for petitioners to raise at an appropriate stage in an appropriate proceeding in accordance with law.

27. C.D. File be returned to counsel for official respondents.

(Vinod Chatterji Koul)
Judge

Srinagar

20.03.2025

‘Qazi Amjad, Secy’

Whether approved for reporting? Yes/No.