2025:AHC-LKO:61952

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPLICATION U/S 482 No. - 1777 of 2022

Virendra Tiwari And Others

.....Applicant(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Deptt. Of Home, Civil Sectt. And Another

.....Opposite Party(s)

Counsel for Applicant(s) : Abhineet Jaiswal, Rani Singh
Counsel for Opposite Party(s) : G.A., Banwari Lal, Bhup Chandra Singh

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Court No. - 16

HON'BLE BRIJ RAJ SINGH, J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application has been filed with the prayer to quash the entire proceedings arising out of impugned order dated 02.01.2020 in counter-blast Complaint Case No.02 of 2020 *(Sumitra Tiwari Vs. Virendra Tiwari and Others)* pending in the Court of Learned Court of Additional Session Judge/ Special Judge - POCSO Act, Court No. 12, Sultanpur and the impugned summoning order dated 01.01.2020 passed by the Additional Session Judge/ Special Judge - POCSO Act, Court No. 12, Sultanpur issuing summons against the applicants under Sections 323, 504, 506, 354, 511 I.P.C and Section 7/8 of POCSO Act."

3. Brief facts of the case are that the opposite party no.2 is the wife of Acheram Tiwari, son of Shri Matapher Tiwari and also the complainant. The applicant no.1 lodged FIR bearing Case Crime No.533 of 2019 under

Sections 323, 336, 354(kha), 504, 506 IPC and Section 7/8 of POCSO Act against the husband of applicant no.2 and her family members. The allegation in the aforesaid FIR is that Acheram Tiwari along with two accused, namely, Sanjay Tiwari and Anil Tiwari molested the 16 years' old niece of applicant no.1 and when she raised alarm, another niece of applicant no.1 rushed to rescue her. Against the said incident, the FIR bearing Case Crime No.533 of 2019 was lodged on 27.08.2019, under Sections 323, 336, 354(kha), 504, 506 IPC and Section 7/8 of POCSO Act against Acheram Tiwari, Sanjay Tiwari and Anil Tiwari. On the date of alleged incident i.e. 27.08.2019, the police reached to the place of incident after receiving call from applicant no.1 on Dial 100 and the police party was also attacked by the husband of opposite party no.2 and his brothers, Sanjay Tiwari and Anil Tiwari. Therefore, the police lodged FIR bearing Case Crime No.534 of 2019 under Sections 307, 353, 332, 336, 392, 323, 504, 506 IPC against the aforesaid persons.

4. The investigation was completed by the police in Case Crime No.533 of 2019 and charge sheet was filed by the Investigating Officer on 26.09.2019 under Sections 323, 336, 354 (kha), 427, 504, 506 IPC and 7/8 of POCSO Act.

5. He further submitted that the applicant nos.2 and 3 are the witnesses in the charge-sheet. The investigation of Case Crime No.534 of 2019 was also concluded by the investigating officer against the accused, Acheram Tiwari, Sanjay Tiwari and Anil Tiwari and charge sheet was submitted under Sections 307, 323, 353, 332, 336, 392, 504, 506 IPC on 05.10.2019. Thereafter, when the aforesaid two FIRs were registered against the husband and brother-in-laws of opposite party no.2, the applicants were informed that one of the brother-in-laws of opposite party no.2, namely Sanjay Tiwari in order to save their skin moved a false complaint before

learned Court of Additional Chief Judicial Magistrate, Court No.17, Sultanpur on 11.09.2019 wherein, the allegation is levelled to the extent that alleged incident dated 27.08.2019 never happened, under Sections 323, 325, 504, 506, 147, 392, 427, 452 IPC. The complainant- Sanjay Tiwari in the aforesaid case had made concocted stories of incident dated 27.08.2019.

6. The aforesaid main accused persons, namely Acheram Tiwari, Sanjay Tiwari and Anil Tiwari could not find any immediate favour from the learned Court of Additional Chief Judicial Magistrate, Court No.17, Sultanpur then the opposite party no.2 in order to wreak vengeance against the applicants for having lodged the FIR No.533 of 2019 against her husband and brother-in-laws, moved an application U/S 156(3) Cr.P.C. before the learned Special Court on 12.09.2019, after 15 days from the lodging of FIR No.533 of 2019 against the named persons by the applicant no.1. The learned judge sought report from the police in pursuance of the application U/S 156(3) Cr.P.C. The report was submitted by the police (police report has been annexed as annexure no.3 to the supplementary affidavit) and the police has reported that the fact came to the knowledge that on 27.08.2019, applicant no.1 had lodged the FIR No. 533 of 2019 against Acheram Ram Tiwari, in which, it is mentioned that the modesty of his niece was outraged. Police has also supported that due to personal vengeance, the complaint has been lodged by the opposite party no.2, which appears to be false and out of malicious intention. The statements under Sections 200 and 202 of CrPC were also recorded, thereafter, the summons have been issued against the applicants.

7. It has been submitted that the Magistrate while issuing summoning order has not given due consideration to the fact that police had already given report of the incident that to settle the personal score, the complaint

has been filed and the Magistrate is silent on the aforesaid issue.

8. It has been submitted by the learned counsel for the applicants that false allegations have been leveled by opposite party no.2 against the applicants by filing the application U/S 156(3) Cr.P.C. which was filed on 12.09.2019 with the intention to exert pressure upon the applicants so that applicant no.1 would refrain from prosecuting the husband and brother-in-laws of opposite party no.2 in FIR No.533 of 2019 and applicant no.2 and 3, who are witnesses to the incident of the FIR No.533 of 2019 and FIR No.534 of 2019 do not give their statements.

9. It is next submitted that it is a case of counter-blast and out of retaliation, the complaint has been filed, it has further been submitted that while moving application U/S 156(3) Cr.P.C., the opposite party no.2 did not make any mention about the fact that on 27.08.2019, an FIR was lodged. It is further submitted that in the complaint moved before the learned Chief Judicial Magistrate, Court No.17, Sultanpur on 11.09.2019, neither the fact that the FIR Nos.533 of 2019 and 534 of 2019 lodged against him and his brothers on 27.08.2019 is disclosed nor the incident dated 03.09.2019, as stated in the application U/S 156(3) Cr.P.C. filed by the opposite party no.2 against the applicants before the learned Special Court on 12.09.2019 is disclosed.

10. The learned counsel for the applicants has submitted that after going through the facts and circumstances of the case, it is clear that malicious proceedings have been initiated by opposite party no.2 out of retaliation of the FIR lodged by the applicants.

11. In support of his submission, learned counsel for the applicants has also placed reliance on the judgment of the Hon’ble Apex Court passed in the case of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.*** reported

in ***1992 Supp (1) SCC 335.*** He has specifically relied upon the guidelines of the aforesaid judgment as mentioned in para no.102 and has submitted that the category of cases where power can be exercised U/S 482 Cr.P.C., has been enunciated by the Hon'ble Apex Court in seven points in the following manner:

"*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 ciently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

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

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

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

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

Code.

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

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. The learned counsel for the applicant has relied on the judgment of ***Priya nka Srivastava and Anr. Vs. State of UP and Ors.*** reported in ***(2015) 6 SCC 287.*** Relevant portion of the aforesaid judgment is as under:

"*29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and

also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumariss are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

13. It has been submitted by learned counsel for the applicants that the opposite party no.2 filed a complaint not with clean hands and she suppressed the material facts and also did not disclose about the earlier

FIRs lodged against the accused persons who belonged to her side.

14. Learned counsel for the applicants has also relied on the judgment of ***Vineet Kumar and Ors. Vs. State of UP and Ors.*** reported in ***(2017) 13 SCC 369.*** Relevant paragraphs of the aforesaid judgment are as under:

"24. The judgment of this Court in State of Haryana v. Bhajan Laß has elaborately considered the scope and ambit of Section 482 CPC. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately considered the scope of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain categories of cases by way of illustration where power under Section 482 CrPC can be exercised to prevent abuse of the process of the Court or secure the ends of justice.

25. Para 102 which enumerates 7 categories of cases where power can be exercised under Section 482 CrPC is extracted as follows : (Bhajan Lal case, SCC pp. 378-79)

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if

they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the 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."

26. A three-Judge Bench in State of Karnataka v. M. Devendrappaz had the occasion to consider the ambit of Section 482 CPC. By analysing the scope of Section 482 CrP,

this Court laid down that 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 abuse. It further held that 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. The following was laid down in para 6 : (SCC p. 94)

"6.... 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 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 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 i made to abuse that authority so as to produce injustice, the court has 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 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 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 accepted in totes alleged and whether any offence is made out even if the allegations are

27. Further in para 8 the following was stated: (Devendrappa case, SCC p. 95)

"8. … Judicial process 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 iustice were set out in some detail by this Court in State of Harvana v. Bhajan Lal."

28. In Sunder Babu v. State of T.N.&, this Court was considering the challenge to the order of the Madras High Court where application was under Section 482 CPC to quash criminal proceedings under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 CrPC taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in Bhajan Lal cases and held that the case fell within Category 7. The Apex Court relying on Category 7 has held that the application under Section 482 deserved to be allowed and it quashed the proceedings.

29. In another case in Priya Vrat Singh v. Shyam Ji Sahai, this Court relied on Category 7 as laid down in State of Haryana v. Bhajan Laß. In the above case the Allahabad High Court had dismissed an application filed under Section 482 CrPC to quash the proceedings under Sections 494, 120-B and 109 IPC and Sections 3 and 4

of the Dowry Prohibition Act. After noticing the background facts and parameters for exercise of power under Section 482 CrPC the following was stated in paras 8 to 12 : (Priya Vrat cases, SCC pp. 235-36),

8. Further it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry turture was made someitme in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of Respondent 1.

10. The parameters for exercise of power under Section 482 CrPC have been laid down by this Court in several cases.

11. '19. The section does not confer any new power on the High Court. It oniy 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, (1) to give effect to an order under the Code, (il) to prevent abuse of the process of court, and iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts.

All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur 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 anc 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 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 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.

20. 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. 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 nazy, 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, Raghubir Saran v. State of Bihar and Minu Kumari v. State of Bihar2, SCC p. 366, paras 19-20.)

12. The present case appears to be one where Category 7 of the illustrations given in State or Haryana v. Bhajan La/? is clearly applicable."

30. From the material on records, the following facts are disclosed from the sequence of events which preceded the registration of FIR on 6-11-2015. The complainant, her husband and son had taken different amounts totalling Rs 22 lakhs 50 thousand in the month of May 2015 for business/shop purposes from the accused. Three agreements were written on non-judicial stamp papers on 29-5-2015, 1-6-2015 and 31-8-2015 wherein the complainant, her husband and son have acknowledged receipt of the money in cash as well as by cheque. Cheques of Rs 6 lakhs, Rs 14 lakhs 50 thousand were given to the accused for ensuring the repayment. Cheques were drawn on Prathama Bank, Kanth Branch, District Moradabad. Cheques were deposited in the bank which were returned with endorsements "No Sufficient Balance". After cheques having been dishonoured, complaints under Section 138 of the Negotiable Instruments Act were filed by the accused against the husband and son of the complainant which were registered in the month of September/October and were pending before alleged incident dated 22-10-2015.

31. The complainant alleges rape by the accused on 22-10-2015 at 7.30 p.m. at her house and alleges that on the same day she went to the police station but FIR was not registered. She states that after sending an application on 26-10-2015 to the SSP, she filed an application under Section 156(3) CrPC before the Magistrate. There is no medical report obtained by the complainant except medical report dated 20-11-2015. The IO on 7-11-2015 when asked the complainant to get medical examination done, the complainant and her husband refused. The incident having taken place on 22-10-

2015 at 7.30 p.m. nothing was done by the complainant and her husband till 26-10-2015 when she alleges that the application was sent to SSP.

32. During investigation, the IO has recorded the statements of the brother of the complainant's husband as well as Smt Bina Vishnoi, the wife of the husband's brother who were residing in the same house and have categorically denied that any incident happened in their house. Both, in their statements and affidavits have condemned the complainant for lodging a false report.

33. The IO collected affidavits of several persons including affidavits of Nikesh Kumar and Smt Bina Vishnoi and on collecting the entire material and visiting the spot the IC had come to the conclusion that no such incident took place and submitted a final report dated 29-11-2015. On 29-11-2015 itself, the 10 has submitted another report for prosecution of the complainant under Section 182 CrPC for giving false information to the police.

34. After submission of final report and submissions of report under Section 182 CrPC dated 29-11-2015 the complainant filed a protest petition on 7-1-2016.

35. It is true that in the statement under Section 164 CPC, the complainant repeated her allegation. The complainant has also recorded her age in the statement as 47 years.

36. The Magistrate in allowing the protest petition only considered the submission made by the State while summoning the accused in para 6 which is to the following effect:

"6. In compliance with the order passed by the Hon'ble High Court and from the perusal of evidence and entire case diary, this Court comes to the conclusion that the complaint is required to be registered as police complaint and there are sufficient grounds to summon the accused Vinit Kumar, Sonu and Nitendra for their trial under Sections 376-D, 323 and 352 of the Penal Code, 1860."

37. The learned Sessions Judge has also affirmed the order taking note of statement

under Section 164 CrPC.

38. There was sufficient material on record to indicate that there were financial transactions between the accused and the complainant, her husband and son. On dishonour of cheques issued by the complainant's husband and son, proceedings under Section 138 of the Negotiable Instruments Act were already initiated by the accused. All family members of the complainant were living in the same house. The brother of the complainant's husband and his wife, in their statements before the IO have admitted monetary transactions of his brother with the accused. The statements before the IO of both Nikesh Kumar and Smt Bina Vishnoi have already been extracted above, which were part of the case diary and was material which ought to have been looked into which was submitted by the IO in the final report.

39. The fact is that no medical examination was got done on the date of incident or even on the next day or on 7-11-2015, when the IO asked the complainant and her husband to get done the medical examination. Subsequently it was done on 20-11-2015, which was wholly irrelevant. Apart from bald assertions made by the complainant that all the accused have raped her, there was nothing which could have led the courts to form an opinion that the present case is a fit case of prosecution which ought to be launched. We are conscious that the statement given by the prosecutrix/complainant under Section 164 CrPC is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above.

40. Reference to the judgment of this Court in Prashant Bharti v. State (NCT of Delhi) 13 is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Sections 328 and 354 IPC with regard to the incident dated 15-2-2007. She sent a telephonic information on 16-2-2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21-2-2007 she gave a supplementary statement alleging

rape by the appellant on 23-12-2006, 25-12-2006 and 1-1-2007. The statement under Section 164 CrPC of the prosecutrix was recorded. Police filed charge-sheet under Sections 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Sections 328/354 could be found. However, on the ground of statement made under Section 164 CrPC charge-sheet was submitted.

40.1. Para 10 of the judgment which notes the charge-sheet is as follows : (Prashant Bharti case, SCC p. 300)

"10. On 28-6-2007, the police filed a charge-sheet under Sections 328, 354 and 376 of the Penal Code. In the charge-sheet, it was clearly mentioned that the police investigation, from different angles, had not yielded any positive result. However, the charge-sheet was based on the statement made by the complainant/prosecutrix before the Metropolitan Magistrate, New Delhi under Section 164 of the Code of Criminal Procedure, which was found to be sufficient for the charges alleged against the appellant-accused. A relevant extract of the charge-sheet depicting the aforesaid factual position, is being reproduced below:

'I, the Inspector, tried my best from all angles to recover the intoxicating substance/Pepsi/Pepsi glass and undergarments worn at the time of the rape. But nothing could be recovered and for this reason, the blood sample of the accused could not be sent to FSL. As from the investigation so far conducted, no proof could be found in support of the crime under Sections 328/354 IPC and even the position of accused Prashant Bharti is not available at Lodhi Colony at the date and time as his mobile phone ill (sic). However, prosecutrix Priya Porwal made statement on 21-2 -2007 and on 27-2-2007 under Section 164 CPC which is sufficient in support of his challan for the offence under Section 376 IPC.'"

(emphasis in original)

40.2. The writ petition was filed by the accused for quashing the FIR which was dismissed by the High Court on 27-8-2007. Thereafter, charges were framed on 1-12-

2008. Dissatisfied with the framing of charges criminal revision petition was filed which was dismissed by the Delhi High Court on 16-1-20094, The order of the Additiona!

Sessions Judge has been extracted by this Court in para 14 which is quoted below :

(Prashant Bharti case13, SCC p. 301)

"14. Dissatisfied with the action of the trial court in framing charges against him, the appellant-accused filed Criminal Revision Petition No. 08 of 2009, whereby he assailed the order dated 1-12-2008 passed by the Additional Sessions Judge, New Delhi. The Delhi High Court dismissed the revision petition on 16-1-20094, by inter alia observing as under : (Prashant Bharti case, SCC OnLine Del para 12)

'12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this revision petition is dismissed in limine while making it clear that anything herein shall not be construed as an opinion on merits at trial.'

"40.3. The appeal was filed against the aforesaid judgment of the High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the court. In para 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that the investigating officer has acknowledged that he could not find any proof to substantiate the charges. The charge -sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CPC. In paras 24 and 25 of the judgment the following was stated :

(Prashant Bharti case, SCC pp. 308-09)

"24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever

have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge-sheet dated 28-6-2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC.

25. Based on the holistic consideration of the facts and circumstances summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar casels stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the are accordingly quased, New Delhi on 1-12-2008, deserves to be quashed. The same.

40.4. Thus, the above was the case where despite statement under Section 164 CrPC by the prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal proceedings.

41. Inherent power given to the High Court under Section 482 CrPC is with the

purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as 379, para 102) enumerated in State of Haryana v. Bhajan Laß, which is to the following effect : (SCC p. "102. (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."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Laf, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

15. It has further been submitted that the Court has not applied its mind properly. Even the statements under Sections 200 and 202 CrPC are available before the Court then certainly it ought to have examined all the other attending facts and circumstances of the case but in the present case, the Court below has not appreciated entire facts and passed the summoning order. He has further submitted that inherent power is given to High Court U/S 482 Cr.P.C. with the purpose and object of

advancement of justice, thus, the Court cannot permit a prosecution to go on if, the case falls under one of the categories as illustrated and enumerated in the case of ***Bhajan Lal (supra).***

16. Learned counsel for the applicant further relied on another judgement of the Hon'ble Apex Court passed in the case of ***Pepsi Foods Ltd. And Anr. Vs. Special Judicial Magistrate and Ors.*** reported in ***(1998) 5 SCC 749.*** Relevant paragraphs of the aforesaid judgment are as under:

"*28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceedina auashed aaainst him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High

Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused". We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the Magistrate as well, as the Magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the Magistrate could them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturers of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as Accused 3. The preliminary evidence on which the first respondent relied in issuing summons to the appellants also does not show as to how it could be said that the appellants are manufacturers of

either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short "the Fruit Order"). It is not disputed that the beverage in question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirements is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle.

The licence number of the manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of. the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that inHamdard Dawakhana (Wakf) v. Union of India? an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court"

17. It has further been submitted by learned counsel for the applicants that the Magistrate while summoning the accused has to apply his mind by examining all the attending circumstances and documents. Even he has to question the complainant and his witnesses to know the facts and truthfulness but in the present case, no such recourse has been adopted by the Magistrate.

18. On the other hand, Shri Sanjay Kumar, learned AGA has submitted that the summons have been issued by the Court below after considering the statements recorded under Sections 200 and 202 CrPC. He has submitted that after perusal of the aforesaid statements, offence is made out. Therefore, the application is liable to be **rejected.**

19. I have heard the submissions advanced on behalf of the learned counsel for the applicants and learned AGA and after going through the record and I find that the present complaint has been lodged out of mala fide intention, after a lapse of 15 days from the date of lodging of the FIR by applicant no.1 against the husband and brother-in-laws of the opposite party no.2. It is also evident that the opposite party no.2 has not disclosed the said facts in her complaint. It also appears that opposite party no.2 instituted the said complaint just to settle her personal score and made allegation of outraging modesty of her niece so that the criminal colour can be given and the matter can be settled between the parties. It is also relevant to mention here that another complaint which was lodged by Sanjay Tiwari, who is the accused in the FIR lodged by the applicant no.1 had also filed application on 11.09.2019, as a complaint, in which, he has not disclosed the fact that earlier, the applicant no.1 had already lodged the FIR against him and his family.

20. I am of the view that the law enunciated by the Hon’ble Apex Court in the case of *Bhajan Lal (supra),* particularly the seven points, wherein, it is provided that if the complaint is out of vengeance, then the Court can interfere under Section 482 CrPC.

21. In view of the above, the present application stands **allowed** and the judgment of *Bhajan Lal (supra)* is applicable in the present case. Accordingly, the entire proceedings arising out of Complaint Case No.02

of 2020 *(Sumitra Tiwari Vs. Virendra Tiwari and Others)* pending in the Court of Learned Court of Additional Session Judge/ Special Judge - POCSO Act, Court No.12, Sultanpur are hereby **quashed.**

(Brij Raj Singh,J.)

October 8, 2025
V. Sinha

Digitally signed by :-
VAISHALI SINHA
High Court of Judicature at Allahabad,
Lucknow Bench