(2024) 02 AHC CK 0013

Allahabad High Court, Lucknow Bench

Case No: Application U/S 482 No. - 824 Of 2024

Dr. Faisal Khan And Another	APPELLANT
Vs	
State Of U.P. Thru. Prin. Secy. Deptt. Of Home U.P. Lko. And 2 Others	RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 21, 32, 226, 227
- Code of Civil Procedure, 1908 - Order 23 Rule 1
- Allahabad High Court Rules, 1952 - Rule 2
- Indian Penal Code, 1860 - Section 34, 323, 419, 420, 427, 467, 468, 471, 504, 506
- Code Of Criminal Procedure, 1973 - Section 155(2), 156(1), 438, 482

Hon'ble Judges: Subhash Vidyarthi, J

Bench: Single Bench

Advocate: Anshuman Singh, Fazal Haider Zaidi, Avinash Chandra, Eshan Garg

Final Decision: Dismissed

Judgement

Subhash Vidyarthi, J

1. Heard Sri. Prashant Chandra Senior Advocate assisted by Sri. Anshuman Singh Advocate, the learned Counsel for the applicants, Sri. Amit Kumar Dwivedi, the learned A.G.A. and Sri. Avinash Chandra, the learned Counsel for the opposite party no. 2.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicants have sought quashing of F.I.R. No. 39 of 2024 under Sections 419, 420, 467, 468, 471, 427, 323, 504, 506 and 34 I.P.C., Police Station Kotwali, District Barabanki.

3. The learned A.G.A. and the learned Counsel for the opposite party no. 2 raised a preliminary objection that the application under Section 482 Cr.P.C. is not maintainable for quashing of the F.I.R. in view of the law laid down by a Bench consisting of seven Hon'ble Judges of this Court in Ramlal Yadava versus State of U.P. (1989) 1 MWN (Cr.) 198 All (FB).

4. Sri. Prashant Chandra, the learned Senior Advocate appearing for the applicant submitted that a First Information Report can be questioned and set aside in proceedings under Section 482 Cr.P.C. which preserve the inherent powers of the High Court's to prevent abuse of the process of court. The availability of extraordinary remedy of Writ Petition under Article 226 of the Constitution of India would not oust the inherent jurisdiction of this Court under Section 482 Cr.P.C.

5. The learned A.G.A. and the learned Counsel for the opposite party no. 2 further submitted that the applicants not only have a remedy of filing a Writ Petition available for the relief sought, rather they have in fact already availed that remedy by filing Criminal Miscellaneous Writ Petition No. 642 of 2024, which was dismissed by means of an order dated 30.01.2024 which reads as follows: -

"Sri. Pawan Kumar Singh, learned Counsel for the petitioners, at the outset prays that he has been instructed by his client to not press this petition and the same may be dismissed as such.

Accordingly, this Writ Petition is dismissed as not pressed."

6. The learned A.G.A. and the learned Counsel for the opposite party no. 2 also submitted that the applicants have not disclosed the fact of filing and dismissal of the Writ Petition which was filed by them for the same relief and they are guilty of concealment of the aforesaid material fact.

7. The learned A.G.A. has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Bhisham Lal Verma versus State of Uttar Pradesh and another, 2023 SCC OnLine SC 1399.

8. The learned Counsel for the opposite party no. 2 relied upon the decision of the Hon'ble Supreme Court in Sarguja Transport Service v. S.T.A.T., (1987) 1 SCC 5.

9. After the aforesaid preliminary objection had been raised, the learned Counsel for the applicants filed a supplementary affidavit stating that the applicant no. 1 had met Sri. K. K. Yadav Advocate on 22.01.2024, had told him that there was a grave urgency for filing a petition as he and his brother (the applicant no. 2) could be arrested any moment, and he had handed over the papers of the case to the Advocate, who had told him that the preparation of the case will take some time. In the meanwhile, the Advocate got an affidavit of the applicant no. 1 prepared and got some blank papers

signed by him, although the applicant no. 1 had told the Advocate that he had come to seek opinion only and he had not come prepared to get the case filed and he was not even carrying any fee and expenses. The applicant no. 2 had independently approached Sri. Fazal Haider Zaidi, Advocate for the same purpose on 19.01.2024, who had called both the applicants on the following day. Both the applicants met Sri. Zaidi Advocate on 23.01.2024, who got an affidavit of the applicant no. 1 prepared in the affidavit centre of this Court and told the applicants to contact the Advocate after a couple of days and the petition would be prepared in the meantime. The applicant no. 1 met Sri. Zaidi Advocate on 25.01.2024, on which date the petition was prepared, it was signed on 26.01.2024 and Sri. Zaidi Advocate told him that the petition would be filed on 27.01.2024. The applicant no. 1 received a phone call from Sri. Pawan Kumar Singh Advocate in the evening of 29.01.2024 informing that he had filed the Writ Petition under instructions of Sri. K. K. Yadav Advocate and it would come up on 30.01.2024. The applicants told him that he had not instructed Sri. Yadav Advocate to file any petition and he had already instructed some other Counsel to file the petition. He instructed Sri. Pawan Kumar Singh Advocate to inform the Court that he had not been instructed for filing the petition on behalf of the applicant no. 1.

10. Written submissions have been filed by the learned Counsel for the applicants inter alia submitting that the judgment in Ramlal Yadava (Supra) was given in the backdrop of the fact that Section 438 Cr.P.C., which provides for grant of anticipatory bail, had been taken away in the State of U. P. vide U. P. Act No. 16 of 1976. As the fundamental right guaranteed by Article 21 of the Constitution of India was under threat of violation, redress was being granted by this Court in petitions filed under Article 226 of the Constitution of India as an alternative to anticipatory bail under Section 438 Cr.P.C. It is for this reason that when a charge-sheet is filed, the party is relegated to file a petition under Section 482 Cr.P.C. and its legality is not examined in the petition under Article 226, even if it is pending. The learned Counsel for the applicants has submitted that Ramlal Yadava (Supra) is no more a good law because it does not take into consideration the law laid down by the Hon'ble Supreme Court in the case of R. P. Kapoor versus State of Punjab 1960 SCC OnLine SC 21 and Pratibha Rani versus Suraj Kumar (1985) 2 SCC 370 in correct perspective. The aforesaid judgements have been considered by the Hon'ble Supreme Court in State of Haryana versus Bhajanlal 1992 Supp (1) SCC 335, wherein it has been held that an F.I.R. can be quashed in exercise of inherent powers under Section 482 Cr.P.C. After the Full Bench decision in Ramlal (Supra), the Hon'ble Supreme Court has consistently held in numerous judgments that a First Information Report can be challenged under Section 482 Cr.P.C. Some of those judgments are Abhishek versus State of Madhya Pradesh : 2023 SCC OnLine SC 1083, Mahmood Ali and others versus State of U.P. : 2023 SCC OnLine SC 950, Mitesh Kumar J. Sha versus State of Karnataka and others : (2022) 14 SCC 572, Ananad Kumar Mohatta versus State (NCT of Delhi) : (2019) 11 SCC 706, Padal Venkata Rama Reddy versus

Kovvuri Satyanarayana Reddy : (2011) 12 SCC 437 and Inder Mohan Goswami and another versus State of Uttaranchal and others : (2007) 12 SCC 1.

11. Reference has also been made to a judgment dated 04.10.2023 rendered by a coordinate Bench of this Court in Jawed Aslam versus State of U.P. and other : Neutral Citation No. 2023:AHC-LKO:64280, wherein it has been held that a petition filed under Section 482 Cr.P.C. is maintainable for challenging a First Information Report and it is not necessary to invoke the jurisdiction under Article 226 of the Constitution of India. The decision of the coordinate Bench is binding on this Court as per the law laid down by the Hon'ble Supreme Court in Sub Inspector Roop Lal and another versus Lt. Governor through Chief Secretary, Delhi and others : (2000) 1 SCC 644.

12. Regarding the principle laid down in Sarjuga Transport (Supra), it has been submitted that the petitioner has not invoked the jurisdiction under Article 226 again and he had abandoned the remedy under Article 226 by instructing his Counsel, but he had not abandoned the right to file an application under Section 482.

13. Reliance has been placed upon the decision in the case of Ashok Kumar versus New India Assurance Company : (2024) 1 SCC 357 wherein it has been held that due to an act of a lawyer of withdrawing a complaint, the litigant cannot be precluded to institute a fresh complaint after the withdrawal of the earlier complaint by the lawyer without instructions.

14. The learned Counsel for the opposite party no. 2 has submitted that the conduct of the applicants in first filing a Writ Petition seeking quashing of the F.I.R., thereafter withdrawing the same without seeking any liberty from the Division Bench dealing with Criminal Writ Petition and then filing an application under Section 482 Cr.P.C. before a Single Judge Bench, and that too, without disclosing the fact of filing and dismissal of the Writ Petition, amounts to bench hunting tactics, which has been deprecated time and again. He has relied upon the judgments in the cases of Ambalal Parihar versus State of Rajasthan and others 2023 SCC OnLine Raj 1374, R. Annapurna versus Ramadugu Anantha Krishna Shastry and other (2002) 10 SCC 401, Bhisham Lal Verma versus State of Uttar Pradesh and another 2023 SCC OnLine SC 1399, Kamini Jaiswal versus Union of India and another (2018) 1 SCC 156, Sarguja Transport Service v. S.T.A.T., (1987) 1 SCC 5, Hari Singh Mann versus Harbhajan Singh Bajwa and others (2001) 1 SCC 169, Dheer Singh and another versus State of U. P. & another (2019) SCC OnLine All 2776 and Abdul Gaffar and another vesrus Ishtiaque Ahmad and another 1989 All.L.J. 297.

15. In Ramlal Yadava versus State of U.P. (1989) 1 MWN (Cr.) 198 All (FB) it was held that an application under Section 482 Cr.P.C. is not maintainable for the relief of quashing of an F.I.R. and this relief can be claimed only by filing a Writ Petition under Article 226 of the Constitution of India. The learned Counsel for the applicants submits that this

judgment was delivered without considering the precedents in the correct perspective. There is neither any need nor any occasion to decide the correctness of the seven Judge Bench of this Court in Ramlal Yadava (Supra), as there are numerous subsequent decisions of the Hon'ble Supreme Court laying down that an F.I.R. can be quashed in exercise of the inherent powers recognized by Section 482 Cr.P.C., subject to the conditions laid down in those judgments.

16. A Bench consisting of seven Hon'ble Judges of the Hon'ble Supreme Court held in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 that: -

"21....In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution."

17. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court considered numerous precedents on the point and summarized the law on the point in the following words: -

"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.

i. 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.

ii. 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.

iii. 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.

iv. 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.**

v. 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.

vi. 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.

vii. 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

18. In Mahmood Ali and others versus State of U.P. : 2023 SCC OnLine SC 950, it was observed that: -

"Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such

proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation."

19. In Abhishek v. State of M.P., 2023 SCC OnLine SC 1083 also, it was held that **"It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr. P.C. to quash the FIR even when a charge-sheet is filed by the police during the pendency of such petition".**

20. Thus the Hon'ble Supreme Court has always treated the extraordinary powers under Article 226 of the Constitution of India and the inherent powers recognized by Section 482 Cr.P.C. at par and an F.I.R. can be quashed in exercise of either of the aforesaid two proceedings.

21. It is also settled law that in case there is a conflict in the judgments of the Hon'ble Supreme Court and a High Court, undisputedly the law declared by the High Court has to give way to the law laid down by the Hon'ble Supreme Court. As the law laid down by the seven Judge Bench of this Court in Ramlal Yadava (Supra) is in conflict with the law laid down by the Hon'ble Supreme Court in P. Ramachandra Rao, Bhajan Lal, Mahmood Ali and Abhishek (Supra), undisputedly the law laid down by the Hon'ble Supreme Court would govern the field.

22. Therefore, the applicants had the option to file a Writ Petition or to file an application under Section 482 Cr.P.C. The learned Counsel for the applicants has submitted that the principle of dominus litus entitles the applicants to choose the any one of the fora.

23. There can be no dispute to the proposition that in case a litigant has the option of approaching more than one forum for redressal of his grievances, he has the right to choose the forum of his convenience. However, the question in the present case is not regarding maintainability of the application under Section 482 Cr.P.C. - the question is of propriety of filing of the application.

24. As per the provisions contained in Chapter V Rule 2 of the Allahabad High Court Rules, 1952, the applications under Section 482 Cr.P.C. are to be placed before a single Judge Bench whereas Criminal Writ Petitions filed for quashing of an F.I.R. are to be placed before a Division Bench. Although the powers of the High Court under extraordinary jurisdiction under Article 226 of the Constitution of India and the inherent powers of the High Court recognized by Section 482 Cr.P.C. are the same, the Hon'ble Chief Justice has assigned the roster of Criminal Writ Petitions to a Division Bench and the roster of Applications under Section 482 Cr.P.C. has been assigned to the Single Judge Bench.

25. The principle of dominus litus was applicable at the inception, when the applicants had to choose one of the two remedies available to them. The applicants had chosen to file a Writ Petition in which the scope of enquiry and interference was the same as that under Section 482 Cr.P.C. However, the applicants got the Writ Petition dismissed as not pressed although their grievance still existed. The applicants did not disclose any reason for getting the writ petition dismissed as not pressed. The reason could well be an assessment that they would not be able to get a favourable order from the Division Bench. The Writ Petition was got dismissed as not pressed without seeking a liberty from the Division Bench to approach the Single Judge Bench by filing an application under Section 482 Cr.P.C.

26. In Union of India v. Cipla Ltd., (2017) 5 SCC 262, the Hon'ble Supreme Court held that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not. The facts stated above clearly establish that it is a typical example of forum shopping, which practice has always been deprecated by the Courts.

27. Moreover, the facts of filing and dismissal of the earlier petition filed under Article 226 for the same relief was concealed in the application under Section 482 Cr.P.C. The learned A.G.A. raised a preliminary objection regarding maintainability of the application under Section 482 and the learned Counsel for the applicant replied to it. It was only after the learned Counsel for the opposite party no. 2 had pointed out concealment of the fact of filing of the Writ Petition and its dismissal, that the learned

Counsel for the applicants filed the supplementary affidavit. It appears that the supplementary affidavit was kept ready to meet the contingency of the concealment of filing and dismissal of the Writ Petition being brought to the notice of this Court.

28. This conduct of the applicants in concealing the material fact of filing and dismissal of the Writ Petition while they have approached to invoke the inherent powers of this Court to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, appears to be an abuse of the process of Court and it does not in any manner secure the ends of justice and it is liable to be deprecated.

29. In Sarguja Transport Service v. S.T.A.T., (Supra), the Hon'ble Supreme Court considered the question whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code of Civil Procedure is adopted in respect of Writ Petitions filed under Articles 226/227 of the Constitution of India also. While answering this question, the Hon'ble Supreme Court held that: -

"8...It is plain that when once a Writ Petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the Writ Petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in Daryao v. State of U.P. [AIR 1961 SC 1457] in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao case is to be found at p. 593 and it is as follows:

"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these Writ Petitions and no other."

*** * ***

"9...But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of Writ Petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a Writ Petition filed in a High Court without permission to

file a fresh Writ Petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the Writ Petition when he withdraws it without such permission. ... We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a Writ Petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open."

30. The principle of law laid down in Sarguja Transport (Supra) will apply to the present case as well, where although the previous petition was filed under Article 226 of the Constitution of India and the subsequent application has been filed under Section 482 Cr.P.C., the prayers made in both the petitions and the scope of enquiry and interference are the same and the only difference is that the earlier Writ petition was to be heard by a Division Bench while the instant application under Section 482 Cr.P.C. is to be heard by a Single Judge Bench.

31. Now I will proceed to consider the explanation given by the applicants in the supplementary affidavit for withdrawal of the Writ Petition, that the Writ Petition had been filed by a Counsel who had no instructions. The applicant no. 1 has stated in the supplementary affidavit that he had met Sri. K. K. Yadav Advocate on 22.01.2024, had told him that there was a grave urgency for filing a petition as he and his brother (the applicant no. 2) could be arrested any moment, and he had handed over the papers of the case to the Advocate, who had told him that the preparation of the case will take some time. In the meanwhile, the Advocate got an affidavit of the applicant no. 1 prepared and got some blank papers signed by him, although the applicant no. 1 had told the Advocate that he had come to seek opinion only and he had not come prepared to get the case filed and he was not even carrying any fee and expenses.

32. The earlier petition was signed by the applicants on 22.01.2024 and it was filed on 23.01.2024 and it indicates that the Advocate engaged by the applicants acted promptly, keeping in mind the apprehension expressed by the applicant no 1 that he and his brother might be arrested any moment. The applicant no. 1 has disclosed his qualification to be 'B.Tech.' and he is running a business. A reasonable person of ordinary prudence would not accept that an engineer businessman would meet an Advocate, tell him that there was a grave urgency for filing a petition as he and his brother could be arrested any moment, he would hand over the papers of the case to the Advocate, sign an affidavit and some blank papers, but at the same time he would tell the Advocate that he had come to seek opinion only and he had not come prepared

to get the case filed, although he was apprehending arrest any moment. Admittedly the applicant no. 1 had given the relevant papers to the Advocate and he had signed the papers and executed an Affidavit and although the applicants have not stated anything about Vakalanama, the mere filing of the petition establishes that both the applicants had signed a Vakalatnama also. In these circumstances, it cannot be accepted that the Writ Petition filed on 23.01.2024 filed after the applicant no. 1 had handed over and signed the papers on 22.01.2024, had been filed by the Advocate without any instruction. Therefore, the averments made in the supplementary affidavit do not inspire confidence.

33. The supplementary affidavit further states that both the applicants had met Sri. Fazal Haider Zaidi Advocate on 23.01.2024, who had got an affidavit of the applicant no. 1 prepared in the affidavit centre of this Court and told the applicants to contact the Advocate after a couple of days and the petition will be prepared in the meantime. The applicant no. 1 met Sri. Zaidi Advocate on 25.01.2024, on which date the petition was prepared and it was signed on 26.01.2024. However, the affidavit filed with the application under Section 482 discloses that it was signed by the applicant no. 1 and the contents of the affidavit were solemnly affirmed before an Oath Commissioner appointed by this Court on 27.01.2024. While verifying the affidavit, the Oath Commissioner was performing his official function and, therefore, there is a legal presumption that he has performed his official act in a regular manner. There is nothing to rebut this presumption, except the contention of the applicant no. 1 himself, which suffers from serious self-contradictions. Therefore, the declaration made by the Oath Commissioner has to be presumed to be correct.

34. It appears that the applicant no. 1 has cooked up a story to overcome the bar against filing of the second application for the same relief and the charge of concealment of material fact of filing and dismissal of the earlier Writ petition. In this regard, it is also significant to note that even regarding the instant application the applicants claim that they had met and instructed Sri. Fazal Haider Zaidi Advocate only whereas the application has not been filed by Sri. Fazal Haider Zaidi. The application has been signed and filed by Sri. Anshuman Singh and Ms. Geetika Yadav Advocates. Ms. Geetika Yadav has not accepted the Vakalatnama executed by the petitioners. In this manner the applicants have again left the scope of repeating the story and disowning Sri. Anshuman Singh and Ms. Geetika Yadav in case they are not satisfied with the outcome of the case.

35. So far as the judgment in Ashok Kumar v. New India Assurance Co. Ltd., (2024) 1 SCC 357 is concerned, in that case the appellant had filed a complaint before the Consumer Forum on 11.06.2009 alleging that the respondent was delaying the settlement of the claim for theft of a stolen truck. On the date of the complaint, the Insurance Company had not repudiated the claim. After that, on 15-10-2009 the

respondent Insurance Company repudiated the claim. The complaint came up before the District Forum on 22.11.2020 when the appellant's Advocate made a statement that he did not want to proceed with the case and it may be dismissed. The claimant filed a fresh complaint inter alia stating that after filing the earlier complaint, since the counsel for the Insurance Company sought numerous adjournments, his counsel got annoyed with the attitude of the said advocate and, by mistake, withdrew the case on 22-11-2020. It was expressly pleaded that the withdrawal of the said complaint was unfortunate, and that the appellant should not be made to suffer for the wrong deeds of the counsel. In the complaint, the appellant prayed for a direction to the Insurance Company to pay the insurance amount. In the aforesaid factual background, the Hon'ble supreme Court held that: -

"21. In any event, we are convinced that interest of justice requires that the appellant, in the peculiar facts and circumstances of this case, should not be non-suited on the ground that his earlier complaint was withdrawn. We say so for the following reasons:

(i) Firstly, the original Complaint No. 515 was filed on 11-6-2009 when the Insurance Company had not taken any decision on the claim. In fact, the complainant had alleged that the Insurance Company was lingering on with the issue and had complained of not rendering "sufficient service";

(ii) Secondly, pending that complaint, it was on 15-10-2009 that the repudiation letter was issued on purported breach of Conditions 1 & 5 of the Policy;

(iii) Thirdly, we find that a separate proceeding has been drawn up recording the statement of only the lawyer of the complainant. The statement of the lawyer stated that "I, Surender Kumar Gulia, Advocate, state that I do not want to proceed with my case. It may be dismissed".

(iv) Fourthly, in the complaint filed on 6-3-2012, the appellant avers that since the lawyer for the opposite party—Insurance Company was taking numerous dates for arguments, his counsel getting annoyed with the attitude of the advocate of the opposite party withdrew the abovesaid case by mistake.

(v) Fifthly, the appellant further avers that the withdrawal was unfortunate and he ought not to have been prejudiced for the deeds of his lawyer.

(vi) Sixthly, the finding of the National Commission is also factually erroneous, on this score. The learned counsel for the appellant drew our attention to para 9 of the order of the National Commission wherein the following erroneous finding was recorded. (Ashok Kumar case [New India Assurance Co. Ltd. v. Ashok Kumar, 2018 SCC OnLine NCDRC 1920] , SCC OnLine Ncdrc)

"9. It is not disputed that earlier also, the complainant had filed consumer Complaint No. 515 of 2009 against the opposite party/Insurance Company on the same cause of action. Perusal of record would show that aforesaid complaint filed by the complainant in respect of repudiation of insurance claim regarding the same theft was withdrawn by the complainant unconditionally on 22-11-2010. Copy of the relevant order in CC No. 515 of 2009 is on the record. The order is reproduced as under:

'Statement of learned counsel for the complainant for withdrawal of the complaint recorded separately. In view of the statement, the complaint of the complainant is hereby dismissed as withdrawn. File be consigned to record room after due compliance'."

(emphasis in original)

22. It will be noticed that the National Commission was under the wrong impression that the original Complaint No. 515 of 2009 was filed in respect of repudiation of the insurance claim and it proceeded on the erroneous premise that having challenged the repudiation in Complaint No. 515, the withdrawal of the complaint unconditionally on 22-11-2010 was fatal to the appellant. The original Complaint No. 515 of 2009 was filed on 11-6-2009 and the respondent Insurance Company repudiated the claim only on 15-10-2009."

36. Thus the aforesaid judgment specifically states that it was passed keeping in view the peculiar facts and circumstances of that case, which are in no manner similar to the facts of the present case and, therefore, it is of no avail to the applicants.

37. Therefore, this Court is of the considered view that the applicants have not acted fairly while approaching this Court to invoke the inherent powers of this Court under Section 482 Cr.P.C. for quashing of the F.I.R. No. 39 of 2024 under Sections 419, 420, 467, 468, 471, 427, 323, 504, 506 and 34 I.P.C., Police Station Kotwali, District Barabanki after dismissal of Criminal Miscellaneous Writ Petition No. 642 of 2024, which was filed with the same prayer and which was dismissed by a Division Bench without liberty for filing a fresh application for the same relief and thereafter by concealing the fact of filing and dismissal of the earlier Writ Petition in the application under Section 482. Thereafter the applicants have filed the supplementary affidavit containing a story regarding the previous Writ Petition having been filed by an Advocate without instructions, which for the reasons stated above, prima facie appears to be a cooked up story. Keeping in view the entire facts and circumstances stated above, the applicants are not entitled to be granted any relief by this Court in exercise of its inherent powers.

38. Accordingly, the application under Section 482 Cr.P.C. is hereby dismissed with a cost of Rs.25,000/- which shall be deposited by the applicants with the registry of this

Court within a period of 30 days, failing which the Senior Registrar shall initiate proceedings for recovery of the amount by sending a Recovery Certificate to the Collector concerned, who shall recover the amounts as arrears of land revenue and shall remit the same to this Court within a period of three months from the date of issuance of the Recovery Certificate.

39. The Senior Registrar of this Court is directed to transmit the cost amount to Children Home (Girls), Lucknow, which is being run and maintained under the Department of Women and Child Development, Government of U.P.