Kansai Nerolac Paints Limited Vs A.M. Soni Government Labour Officer

Court: GUJARAT HIGH COURT

Date of Decision: Dec. 16, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 204, Section 482
Industrial Disputes Act, 1947 - Section 2(cc), Section 250, Section 25K

Citation: (2016) 4 LLN 650

Hon'ble Judges: Mr. A.J. Shastri, J.

Bench: Single Bench

Advocate: Mr. Amresh N. Patel, Advocate, for the Respondent No. 3; Mr. Varun K. Patel, Advocate, for the Applicants Nos. 1 to 3; Mr Chintan Dave, APP, for the Respondent No. 2; Rule Served, for the Respondent No. 1

Final Decision: Dismissed

Judgement

Mr. A.J. Shastri, J. - The petitioners have filed this petition for the purpose of quashing and setting the complaint being Criminal Case No. 2598

of 2009 pending before the learned Metropolitan Magistrate, Court No. 6, Ahmedabad and also sought the setting aside of an order dated

27/8/2009 whereby the learned Magistrate after taking cognizance of the complaint issued process.

2. The brief facts leading to the rise of present petition are as under:

2.1 The petitioner No. 1 is a Company incorporated under the provisions of Companies Act, 1956 and the petitioners No. 2 and 3 are the CPE

Head and Managing Director respectively. The petitioner No.2 was working as Works Manager in Vatva Unit of the petitioner No.1 till 28th

September, 2007 and on shifting of the unit, he was working as CPE Head at Mumbai of the petitioner No.1 Company at Maharashtra.

2.2 The petitioner No.1 Company is engaged in the business of manufacturing of industrial paints and it has five manufacturing plants/units at

various places across the country. One unit is in Vatva at Ahmedabad, second in Chennai and third one in Kanpur and there are two other units in

Lote, District Ratnagiri(Maharashtra) and Baval, District Revari(Haryana). It is the case of the petitioners that unit at Vatva, Ahmedabad was

originally belonging to Saurashtra Paints Pvt. Ltd. which was taken over by the petitioner No.1 somewhere in the year 1977 and the machineries

and plants of Vatva factory were old one. The main buyers of petitioner No.1 Company''s industrial paints were automobile units like Maruti

Udyog, Hero Honda Motors, Bajaj Auto Limited, Toyoto, Mahindra and Mahindra, etc. and majority of them have their respective manufacturing

plants in northern India and at State of Haryana. Since on account of business competition and on account of various administrative exigencies and

also on account of economical factor and upon visualization of future prospects, it was found by petitioner No.1 company that Vatva being a very

old unit having no latest machinery and was found to be not matching with the competition in business and, therefore, keeping over all

circumstances in mind, the Vatva unit was decided to be shifted to Baval in the State of Haryana and this logical decision has been taken after

considering various factors looking to the business prospects and stability of the company.

2.3 On account of this decision, to give finality to the said decision on 28th September, 2007, the notice was given to workmen and other

employees informing the decision of shifting of Vatva plant to Baval at Haryana so much so that in the said notice, a justification was also provided

with cogent reasons and all workmen were informed to report for duty at Baval on or before 15th October, 2007. The petitioner No.1 company

has thought it fit that since they are workmen of the company itself, instead of discontinuing their service, with a view to see that their interest may

not be jeopardized, they were instructed to report for duty at Baval with special incentives and has also given special settlement allowances in

advance of Rs.10,000/- with other logistic support.

2.4 This notice has also been provided to various concerned authorities of the State and Labour Department and the copy of the notice was also

given to Secretary, Labour Department as well. In addition to giving this notice on 28th September, 2007, the same was displayed also. However,

the workmen through their union i.e. National Labour Union generated a dispute demanding that management should not alter the conditions of

service or resort to stoppage of work nor should transfer any workmen from Vatva to any other unit outside the State of Gujarat without giving the

notice of three months in advance.

2.5 The said dispute, which has been generated through Union, was made the subject matter of conciliation proceeding which came to be admitted

on 22nd October, 2007 and conciliation having been failed, the same was then culminated into a reference on the very next day on 23rd October,

2007, to Industrial Tribunal, Ahmedabad, which was registered as Reference (IT) No. 132 of 2007. A fact to be taken note of is that conciliation

proceeding came to be entertained on 22nd October and on the very next date, the failure report was submitted and reference was registered

before the Tribunal on 23rd October.

2.6 In the said reference, it is the case of the petitioner that Union filed an application at Exh.39 inter alia praying for interim relief restraining the

petitioner No.1 Company from altering the service condition of workmen and transferring the workmen from Vatva to any other unit. The

petitioner management has submitted a reply to the said application but then on 13th June, 2008, by an order, the Industrial Tribunal partially

allowed the application and directed the petitioner No.1 Company not to transfer the workmen from Vatva to any other Unit, however, declined

any interim relief to 16 employees mentioned in the list at Exh.65 before the Tribunal and qua those workmen, Exh.29 application came to be

dismissed by the said order. These workmen whose request was not acceded have approached the Court through their representative Unions in

respect of their adverse position in litigation and then filed Special Civil Application No.9320 of 2008 before this Court. However, the Hon''ble

Court vide judgment and order dated 11th August, 2008 was pleased to dismiss the writ petition. With respect to remaining employees, the

petitioner No.1 was trying to resolve the dispute through negotiation. However, the negotiation could not attain finality, resultantly, the petitioner

No.1 company had to approach this Court by petition being Special Civil Application No.571 of 2009 against the original order dated 13th June,

2008 passed by the Industrial Tribunal below Exh.39. The said writ petition came to be entertained and the notice has also been issued and the

same is pending at the relevant point of time where the present petition is filed.

2.7 During the passage of time, the Government Labour Officer has issued notice on 29th September,2007 alleging that 111 employees were

working in the establishment and work of establishment has been stopped from 28th September, 2007 and thereby the Government Labour

Officer has issued show cause notice as to why criminal prosecution for closure of the establishment in defiance of section 25(O) should not be

initiated or filed. The said show cause notice came to be replied under a communication dated 3rd October, 2007 pointing out in detail that the

petitioner No.1 has not closed down the industry but a unit is shifted to Baval and employees have not been terminated, on the contrary, have been

given incentives and instructed to join at Baval with special settlement allowances as well. It was also pointed out specifically that ex-facie, the

workmen in the petitioner No.1 company are below 100 in number and, therefore, applicability of section 25(O) of Industrial Disputes Act is no

longer attracted and along with the reply, the details have also been provided in the said reply and requested the authority to consider but thereafter

suddenly the petitioners were served with summons on 24th February, 2009 in the complaint filed by respondent No.1 which was registered as

Criminal Case No.2598 of 2008.

2.8 In the said criminal case, the case of the prosecution is that establishment has been closed down with effect from 28th September, 2007

without obtaining prior permission of appropriate authority which is a condition precedent under section 25(O) of Industrial Disputes Act, 1947

(hereinafter referred to as ''the Act'' for short) as the establishment is having more than 100 number of workmen and, therefore, on this precise

base, the complaint came to be filed on 23rd April, 2008 and the learned Magistrate vide order dated 27th August, 2008 took cognizance of the

complaint, directed the process to be issued upon the petitioners which came to be received only on 24th February,2009 and this is how it is the

case of the petitioners that despite the fact that ex-facie the provisions of section 25(O) of the Act are not attracted, the complaint came to be

lodged and even cognizance is also taken.

2.9 It is this complaint and the issuance of process which is made the subject of present petition filed under section 482 of the Code of Criminal

Procedure (hereinafter referred to as ""Cr.P.C."" for short) for seeking quashment of the complaint as also the process issued upon it.

2.10 The petition originally came up for hearing before this Court on 2nd July, 2009 whereupon the Court passed following order by granting

amendment to the petitioners. Said order reads as under:

1. Amendment is granted as per the draft. The same shall be carried out forthwith.

2. Due to paucity of time, it is not possible to take up the matter for hearing today. Hence, S.O. to 8th July 2009.

3. In the meantime, it would be open for the learned advocate for the applicants to pray for adjournment in the proceedings before the Trial Court.

If such a request is made, the Trial Court shall consider the same keeping in view the fact that the present application under Section 482 of the

Code of Criminal Procedure, 1973 for quashing the proceedings of Criminal Case No.2598 of 2008 is pending before this Court.

Direct service is permitted.

2.11 Subsequently, again the matter camp up on 27th September, 2009, but the same could not be heard on account of lack of time and then on

29th October, 2009, this Court was pleased to admit the petition and granted ad-interim relief in terms of paragraph 5(B) and since then, the same

was pending for final disposal. The process of present petition has been served and the pleadings have also been completed and thereafter, it has

come up for final hearing before this Court after having not attained any finality in resolving the entire dispute outside the Court and, therefore,

petition was put up for final disposal.

3. Learned Senior Counsel, Shri K.M. Patel, appearing with Mr. Varun K. Patel, learned advocate representing the petitioners, has pointed out

and contended that the complaint in question is based upon vague and baseless allegations, there is no substantial material to support the allegations

and the complaint in question is nothing but a clear example of abuse of process of Court. The learned counsel has further contended that the

company in question was having less than 100 workmen which would not ex-facie attract the provisions of section 25(O) of the Act and entire

Chapter VB is not applicable as no condition precedent envisaged under the statutory provisions is established. It is also contended by the counsel

that essentially the ultimate grievance which is entangled in the proceeding is a dispute related to the workmen and employer and this industrial

dispute can be agitated at appropriate forum and the complaint is not a proper remedy to deal with the same as the separate statute has provided a

mechanism to resolve if any grievance lies and, therefore, this complaint in question essentially is of civil nature and grievance can be ventilated

through a separate mechanism provided under the Act for which, filing of this complaint and continuance of it would tantamount to an abuse of the

process of law. The learned counsel further contended that it is settled position of law that shifting of a unit cannot be termed as closure of the unit

and the very basis of the complaint is on the premise that unit has been closed down. In fact, the same is not correct and, therefore, since the

complaint is based upon false and frivolous allegation, the same may not be allowed to be precipitated any further. The learned counsel has further

contended that series of decisions in which it has been held that shifting of a factory cannot be termed as closure and, therefore, when there is no

closure at all, applicability of the provisions of section 25(O) of the Act ex-facie is illogical and, therefore, the counsel submitted that such action of

arm twisting method at the behest of Union cannot be allowed to be encouraged and, therefore, this misuse of criminal machinery deserves to be

deprecated and prevented. The learned counsel has further contended that after following proper procedure and after giving adequate opportunity,

the shifting was contemplated and it cannot be said that any statutory provision is violated and, therefore, since material facts have been suppressed

from the bare reading of the complaint, the complaint cannot be entertained. The learned counsel has drawn the attention of this Court to a

complaint which is attached to the petition wherein, in some of the paragraphs, the relevant gaps have been kept and those relevant gaps are also

material which ought not to have been concealed. It has also been contended by the learned counsel that ultimately the entire provision is not

attracted and alleged on the premise that without proper approval of competent authority, the unit has been closed with effect from 28th

September, 2007 whereas unit has not been closed, it is merely shifted to a place where business viability is reflected and, therefore, since none of

the workmen have been discontinued or terminated from the services, the grievances which has been tried to be voiced out has no bearing at all

and, therefore, it is desirable in the interest of justice not to encourage such action of attempt which tantamount to be misuse of process of law.

3.1 Learned counsel, Mr. Patel has further taken the Court to various communications which are attached to the petition compilation. A notice

dated 20th September, 2007 is brought to the notice wherein it has been specifically asserted as to why this decision of shifting is constrained to

have been taken and it has also been projected that none of the workmen were ordered to be discontinued. On the contrary, by giving some

privileges, they have been instructed to continue in the employment. The only circumstance arose for the workmen is that they have to discharge

their working at a different place than Vatva unit. The counsel has further drawn the attention to certain averment made in the notice wherein it has

been provided that shifting allowance has also been prescribed of Rs.10,000/- to each of the workmen and a proper opportunity has also been

provided of sufficient time to report for duty at a shifted place, The learned counsel has further referred to the reply dated 3rd October, 2009 in

which a categorical stand was taken that ex-facie Chapter VB is not applicable at all as it is incorrect that 111 workmen were working in the unit

as on 27th September, 2007. In fact, it has been specifically contended that even in the notice also, provisions of section 25(O) of the Act are not

attracted at all and it has also been asserted in the notice that while unilaterally figuring the number of workmen at 111, no record has been

examined. It is only on account of the say of National Labour Union said to have visited the place and given the number and that has been

accepted as a gospel truth. The learned counsel has contended that what was required under the Statute is that since last 12 months, average

strength should be exceeding more than 100 workmen, then only section 25(O) of the Act is attracted whereas here, it has been categorically

asserted in the notice that average strength of workmen has never exceeded 100 during last 12 months'' period and, therefore, the complaint in

question is ex-facie nothing but an armtwisting method being adopted by the Union upon the petitioners. It has been specifically brought to the

notice of authorities as well that none of the workmen is discontinued, in fact, had been given a chance of reporting with special settlement

allowance and, therefore, by referring to all these material on record, it has been contended by Shri Patel, learned Senior Advocate, that no

offence is committed by the petitioners which would warrant the learned Magistrate to take cognizance of the complaint. In addition thereto, the

learned counsel has also brought to the notice of this Court of an order dated 22nd April, 2013 passed in Special Civil Application No.7262 of

2013 which petition was filed by General Works and North Gujarat Bidi Kamdar Union in which almost in similar situation, when the notice was

given by factory about shifting of premises and the workers were informed to report at new place, there the observation which has been made on

analysis of statutory provision was that section 25(O) cannot be pressed into service as is not attracted and, therefore, by resorting to observation

made by this Court in aforesaid Special Civil Application, it has been contended that here is also almost similar set of circumstance in which the

notice is tried to be termed as violative of section 25(O) of the Act and, therefore, the counsel contended that no such section like 25(O) of the

Act is attracted.

3.2 Shri Patel has further contended that some of the employees have even settled their dispute and, therefore, had there been any such serious

violation, this could not have been done and the learned counsel has submitted that the present Union and the Government Labour Officer on mis-

constructing the statutory provision and the effect of it is precipitating the process of complaint which ex-facie is not tenable. Shri Patel has cited

various decisions on the issue of shifting which is not a closure, on the issue of quashing the complaint if dispute is of a civil nature and also on the

issue of vague and false complaint. Mr. Patel has also drawn the attention to a decision of the Supreme Court in the case of Excel Wear v. Union

of India reported in AIR 1979 SC page 25. In which case, the validity of section 25(O) of the Act is examined and it has been held to be a

valid statutory provision and, therefore, by referring to these decisions ultimately contended that this filing of the complaint and issuance of process

is nothing but a leaver to apply pressure upon the petitioners to succumb to their demand which is not permissible and, therefore, this abuse of the

process of law is requested to be curbed by quashing and setting aside the impugned complaint and process issued upon it. Mr. Patel has further

contended that the authorisation which has been given by authority to file the complaint is also reflecting clear non-application of mind. Mr. Patel

has contended that whenever any sanction is to be given or the approval or authorization, there must reflect a subjective satisfaction of the granting

authority. Here, it is completely missing and, therefore, in a casual and routine manner based upon frivolous allegations and the facts, the complaint

was allowed to be filed and, therefore, this is nothing but a glaring example of misuse of law. No record appears to have been verified and

straightaway, in a mechanical manner, the present petitioners have been arraigned in the prosecution by filing the complaint which is impugned in

the petition. Mr. Patel has contended that entire Chapter VB starts with statutory provision of section 25(k) and 25(k) has specified that condition

precedent of section 25(O) is attracted if the workmen are more than 100 in number. It has also been contended that had there been any workmen

being terminated, the position would have been different to there also but number of workmen is required to be considered while giving

authorisation to lodge the complaint. Mr. Patel has contended that reference is generated only by 68 workmen which figure is also substantiating

the say of the petitioners that workmen were less than 100 in number and, therefore, the entire prosecution has been launched in a mechanical and

routine manner which is uncalled for. Mr. Patel has drawn the attention to a definition of the word ""closure"" defined under section 2(cc) and,

therefore, submitted that this is nothing but an example of shifting and not an example of closure of an unit and, therefore, the very base of the

complaint is ill-founded. Mr. Patel has further contended that to arrive at the figure of ""hundred"" as required under section is to be observed only

strength of the workmen which is to be considered whereas here, the Factory Manager''s report has included the Manager and employees of other

cadre as well and, therefore, allowing the criminal machinery to be precipitated further would tantamount to be a miscarriage of justice and

essentially a labour and industrial dispute is tried to be dealt with in an arm-twisting method under the guise of present criminal complaint which is

required to be curbed by quashing and setting aside the same. An attention is also drawn by Mr. Patel, the learned Senior Counsel, about the

order dated 11th August, 2008 passed in Special Civil Application No.9320 of 2008 and has pointed out that in the absence of any cogent

material about attraction of section 25(O) of the Act, no such criminal prosecution be allowed to be launched. In fact, issuance of summons and

process in criminal matter is a serious matter which could not be issued in such a routine and casual manner. Time and again, several decisions have

warned the learned Magistrates to apply their mind before issuing summons or process but, here, it is a case of clear non-application of mind and,

therefore, in no circumstance, the complaint should not be allowed to be utilised as a leaver to excavate something which otherwise is not amenable

to them and, therefore, the counsel submitted that this step of the authority may not be allowed to be encouraged and the benevolent object of

industrial laws may not be allowed to be misused in such manner and, therefore, contended and requested the Court to quash the complaint in

question.

3.3 Following decision are referred to and pressed into service by learned Senior Counsel, Shri Patel, to substantiate his submissions which will be

dealt with at a proper stage in the present judgment:

1) 2002 II CLR 902 (Bom. High Court) Innovations Garment Ltd. v. S.K. Singe & Anr.

2) 1993 I CLR 987 (M.P. High Court) Fertilizer Corporation of India v. Hindustan Fertilizer Corpn.

3) 2008 I CLR 501 (Bom. High Court) Nicholas Piramal India Ltd. v. Nicholas Employees Union

4) 1993(67) FLR 1151 Hindustan Lever Employees'' union v. The State of Maharashtra and ors.

5) AIR 1963 SC 569 (V 50 C 89) Management of Express Newspaper Pvt. Ltd. v. The Workers and others

6) 2009 I CLR 925 (Cal. High Court) Birla Corporation Limited (Unit Soorah Jute Mill) Sramic Union v. Birla Corporation Ltd. &

Ors.

7) AIR 1988 SC 709 Madhavrao Jiwaji Rao Scindia and anr. v. Sambhajirao Chandrojira Angre and others

8) (2009) 3 SCC 78 V.Y. Jose & anr. v. State of Gujarat and ors.

9) (2005)5 SCC 51 Haldia Refinery Canteen Employees Union and others v. IOC Ltd. and ors.

10) (1997)1 SCC 556 Raj Kumar Gupta v. Lt. Governor, Delhi & ors., para 16.

11) 2006(1) GLH 83 Y.B. Trivedi and Ors. v. K.V. Dabhi, Food Inspector & Ors.

12) Judgment dated 01.09.2008 passed in Criminal Misc. Appln. No. 14462 of 2006 (Coram: Hon''ble Ms. Justice H.N. Devani, J.) Tata

Chemicals Ltd. & Ors. v. Shri B.C.Trivedi, Govt. of the Asst. Commissioner & Anr.

13) 2007 II CLR 193 (Bom. High Court) Biddle Sawyer Ltd. v. Chemical Employees Union

14) AIR 1979 SC 25 Excel Wear v. Union of India and Ors.

4. To oppose the petition filed by the petitioners, learned Additional Public Prosecutor, Mr. Chintan Dave, has contended before the Court that

there are disputed questions of facts involved in the present proceeding and therefore, the complaint may not be throttled at this stage without being

examined further. It is also contended by Mr. Dave that strength of the workmen has remained more than 100 in number and there is categorical

material to justify this and by referring to paragraph 68 of the order of this Court, Mr. Dave has pointed out that yet no evidence was led cogently

to justify the factum of closure and therefore, the very contention that whether a unit shifting is a closure or mere shifting would be a material issue

which cannot be gone into in exercise of inherent jurisdiction. By referring to the judgment of High Court more particularly paragraph No. 7.12

appearing on page 69 of the petition compilation, it has been contended that even this Court in another proceeding has refrained from expressing

any opinion regarding alleged closure and therefore, when there is no specific opinion formulated in any of the proceeding and issue is kept open

about the contention that Vatva unit is shifted, whether it amounts to closure or not is not to be adjudicated at this stage of the proceeding. Mr.

Dave has further contended that there is ample material available on record which justify that a device is adopted by petitioner No.1 Company to

close the unit at Vatva under the guise of shifting and therefore, Mr. Dave has pointed out that no such examination or adjudication be undertaken

at this stage of the proceeding in exercise of inherent jurisdiction. Mr. Dave has further submitted that even in the inspection report also, there is a

reflection of 109 number of workmen working in the factory at Vatva and therefore, it cannot be assumed at this stage that section 25(O) ex-facie

is not attracted. Mr. Dave has contended that this is a benevolent piece of legislation and therefore, must be construed liberally in favour of the

workmen and therefore, the complaint at this stage may not be allowed to be frustrated in view of this peculiar set of instance where several

disputed questions of facts are entangled. Mr. Dave, therefore, contended before this Court that prima-facie, the offence is made out by the

prosecution and therefore, at this stage, no interception be made to frustrate the very object of complaint and therefore, requested the Court not to

allow such interference in the process of complaint. Mr. Dave has further pointed that during course of time, there will be several opportunities

available to justify the petitioners'' innocence and therefore, at this preliminary stage, the complaint may not be allowed to be throttled and

therefore, this being an example of misuse of industrial law at the behest of the petitioners, no interference be made in the process of complaint and

therefore, ultimately requested the Court to dismiss the petition.

5. To oppose the petition, learned advocate, Mr. Amresh Patel, representing the newly added respondent No.3- Union, has specifically contended

that it is clearly appearing from the material on record that at Vatva unit, there were more than 100 workmen working and therefore, the figure

which has been mentioned in the complaint is ipso facto true to the best of knowledge of the complainant so much so that inspection report has

also revealed that there were 109 workmen working in the factory when inspection took place and therefore, it has been contended that when the

figure of number of workmen is exceeding the required limit to press the statutory provision, the complaint in question is justifiably lodged by the

Government Labour Officer. It has been contended by Mr.Patel that simply because 68 workers have raised the reference would not be sufficient

enough to justify or accept that number of workmen in the factory was less than 100. In fact, if some of the workmen have not agitated, the same

would not be a requirement of following the consequence of violation of Chapter 5 of the Act and therefore, simply because 68 workmen have

raised the industrial dispute, no complaint can be thrown on account of that as the entire list of the workmen has not been produced which is

required to be produced by the petitioners and therefore, it has been contended that this is nothing but a device to discontinue the long standing

employment of the workmen. Mr. Patel has further contended that Baval unit of Haryana had long back started much prior to Vatva unit being

closed. In fact, the impression is sought to be given by the petitioners that Vatva unit is shifted to Baval at Haryana but the fact is clear and

undisputed that Baval unit was already in existence prior to this so-called shifting and actual closure of Vatva unit and therefore, this is nothing but a

systematic design adopted by the petitioners to close down Vatva unit and therefore, this is frustrating the very object of Chapter VB and the

procedure and therefore, the complaint is justifiably filed by the Government Labour Officer. It has also been contended that complaint has been

filed after scrupulously observing the procedure and after giving prior authorisation and therefore, it cannot be said that there is any lacuna exists in

lodging the complaint. Mr. Patel has further contended that even the learned Tribunal where the reference was lodged has specifically found by

arriving at a finding of fact that there are more than 100 number of workmen in the premises and still that reference is very much pending and no

final conclusion is arrived at and therefore, unless and until any finality is attached to the said pending proceedings, the finding, which is in existence

at present which is not set aside, as revealed that there are more than 100 number of workmen in the factory and therefore, this contention of

applicability of section 25(O) at this stage is of no consequence. In fact in reality, it has been contended that unit at Vatva is closed and not merely

shifted. Even there are series of decisions wherein a partial closure also amounts to closure of an industry and therefore, so long as the decision of

the learned Tribunal is not overturned, the fact of applicability of section 25(O) cannot be adjudged and assumed at this stage and therefore, by

referring to the interim order of the learned Tribunal, it has been contended that no such exercise to set aside the complaint at this stage be

entertained. It is submitted by Mr. Dave that pursuant to the interim order of the learned Tribunal, even the final order has also been passed

wherein the reference came to be partly allowed against which, two Special Civil Applications in the form of Special Civil Application Nos.704

and 1925 of 2013 are pending and therefore, the condition which has been stipulated in the notice is unfair labour practise adopted against the

workmen, who are members of the Union and therefore, there appears to be a serious prejudice to the workmen and therefore, this is not the

stage where inherent jurisdiction of section 482 of the Code of Criminal Procedure be exercised. It has been contended that the very object of

section 25(O) is based upon the concept of social welfare and therefore, no such hyper technical view be adopted at this stage of the proceeding.

While projecting to these submissions, Mr. Patel has relied upon the decision of the Hon"ble Apex Court in the case of Oswal Agro Furane

Limited v. Oswal Agro Furane Workers Union reported in AIR 2005 SC page 1555 and submitted the Court to dismiss the petition at this

stage of the proceeding.

6. To make a brief rejoinder to the submissions made by learned Additional Public Prosecutor as well as learned advocate, Mr. Amrish Patel,

learned Senior Counsel, Mr. K.M. Patel appearing for the petitioners, has submitted that there is no dispute that the social welfare legislation is not

to be ignored. But, in fact, it has been specifically contended that had there any termination been effected, the concept of social welfare legislation

would have been possible to be pressed into service. In fact, here, prima facie an opinion is just to be seen whether the provisions of section 25(O)

of the Act are attracted or not. Here, the background of fact is such where no such disputed question of fact is visible and therefore, the contention

urged by the learned advocates for the respondents is nothing but a clear example of arm-twisting method which may not be allowed to be

encouraged. Learned Senior Counsel further contended that there is a difference in the definition of ''workman'' given under section 2(l) of the

Factories Act, 1948 and the definition of "workman" given under section 2(2) of the Industrial Disputes Act, 1947. Both Acts i.e. Factories Act,

1948 as well as the Industrial Disputes Act, 1947 are with different avowed object. The Factories Act, 1948 is essentially enacted for providing

for safety measure to the employees and therefore, the definition of ''worman'' in that Statute is having wide meaning than the definition of

''workman'' defined under the Industrial Disputes Act, 1947 where the Statute is brought to seek to regulate and deal with the condition of

workmen and therefore, both these definitions operate with a distinct object and therefore, here is a case where the question is not of a closure but

of a mere shifting and the object and the purpose and reasons of shifting are also not to be ignored and therefore, the complaint in question is

nothing but an example of thwarting the process of survival of industry and therefore, before granting authorisation and before taking cognizance of

complaint, there should have been a proper application of mind which is completely lacking in the present case and therefore, a request is made not

to allow the process of complaint to be precipitated any further and ultimately requested the Court to allow the petition by granting of relief as

prayed for.

7. Having heard learned counsel appearing for the respective parties and having gone through the material on record and upon analysis of the

decisions cited by both the sides, following facts are emerging from the record. Before dealing with the contentions of the respective sides, the

central issue is encircled around some of the statutory provisions of the Act and therefore, the same are required to be taken note of to decide the

issue. Here the main grievance is whether shifting of a business is a closure or not and if that be so, what would be the effect of it is the controversy

erupted between the parties and whether can be examined in present proceedings. The word ''closure'' has been defined under the provisions of

section 2(cc) of the Act inserted with effect from August, 1984, which reads as under:

closure"" means the permanent closing down of a place of employment or part thereof.

This word ''closure'' indicates a permanent closing down of a place of employment or part thereof. In the context of this, the Chapter VB of the

Act is dealing with a special provision relating to lay off, retrenchment and closure in certain establishment. The relevant statutory provision of

section 25(K) reads as under:

25K. Application of Chapter V-B. - (1) The provisions of the chapter shall apply to an industrial establishment (not being an establishment of a

seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an average

per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the

decision of the appropriate Government thereon shall be final.

7.1 This statutory provision has spelt out that the same is applicable to an industrial establishment in which there are not less than 100 workmen

employed on an average per working day for the preceding 12 months. The procedure for closing down an industrial undertaking is prescribed

under section 25(O) which requirement an industrial undertaking is under an obligation to comply. The detailed procedure is prescribed under the

said provision which requires an undertaking to apply for prior permission at least 90 days before the date on which the undertaking is intending to

close down. The established procedure set up in section 25(O) deserves to be quoted hereinafter as the contentions are cantering around this

provision as well.

25-O. Procedure for closing down an undertaking. - (1) An employer who intends to close down an undertaking of an industrial establishment to

which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended

closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of

such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, and dams or

for other construction work.

(2) Where an application for permission has been made under sub-section (1) the appropriate Government, after making such enquiry as it thinks

fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having

regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by

order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the

employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or

refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied

for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and

binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order

granting or refusing to grant permission under sub-section (2) or refer the matter to a tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the

date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has

been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the

benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to

such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the

provisions of subsection (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under

subsection (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section,

shall be entitled to receive compensation which shall be equivalent to fifteen days" average pay for every completed year of continuous service or

any part thereof in excess of six months.]

7.2 A further provision is made under this Chapter VB of the Act which requires that establishment is required to undergo the procedure and if that

is not being observed, a penal consequence is also stipulated under section 25(R) and for non-compliance of section 25(O) or a direction under

section 25(P), a punishment of imprisonment which may extend to one year or fine is stipulated. Sections 25(P) and 25(R) are reproduced

hereinafter:

25P. Special provision as to restarting undertakings closed down before commencement of the Industrial Disputes (Amendment) Act, 1976. If the

appropriate Government is of opinion in respect of any undertaking or an industrial establishment, to which this Chapter applies and which closed

down before the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976) -

(a) That such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) That there are possibilities of restarting the undertaking;

(c) That it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and

services essential to the life of the community to restart the undertaking or both; and

(d) That the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking, It may, after giving an opportunity

to such employer and workmen, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not

being less than one month from the date of the order) as may be specified in the order.

25R. Penalty for closure. - (1) Any employer who closes down an undertaking without complying with the provisions of subsection (1) of section

250 shall be punishable with imprisonment for a term, which may extend to six months, or with fine, which may extend to five thousand rupees, or

with both.

(2) Any employer, who contravenes [an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25O or

a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may

extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two

thousand rupees for every day during which the contravention continues after the conviction.

8. So in substance, the requirement of compliance of certain procedure contemplated under the statutory provision is a legal obligation which

deserves to be scrupulously observed and this Chapter is applicable to an establishment which is having on an average more than 100 workmen as

stated in section 25(K). Now in the context of aforesaid statutory provisions, following facts on hand are to be looked into.

8.1 The controversial figure of 100 is seriously debated by both the sides. The plea taken by the petitioners that the entire Chapter VB is not

applicable at all as at no point of time this average workmen of 100 in number is maintained throughout the year as required under section 25(K) of

the Act and as such, the condition precedent envisaged under this provision is not attracted. Therefore, ex-facie, since it is not satisfied, it cannot

be said that any offence is committed by the establishment. Now if this controversy is perused, as against the averment made on oath by the

petitioner establishment that there were no 100 workers in number which would attract the compliance of the procedure. But in this context, if the

notice to be visualised which is attached at page 28 of petition compilation dated 28/9/2007 issued by the petitioner establishment to all the staff

members and employees including Officers wherein the justification is reflected. However, this figure of related workmen is not spelt out.

Paragraph No.6 of the said notice has indicated that with immediate effect, Vatva unit/establishment is closed down and in the plant at Baval

(Haryana), workers, staff, etc. were to be absorbed. The wordings of this notice indicate that the Baval (Haryana) unit/plant is already in existence

where these workers are to be shifted. No doubt, the incentives have been offered to the workers but at the same time, again if the averment made

in paragraph No.8 of the said notice is perused, this Vatva manufacturing unit is closed down and therefore, there appears to be a serious

controversy whether shifting is taking place or the unit is to be closed down. It further appears from an order below Exh.39 passed in Reference

(IT) No.132 of 2007 that there is a categorical finding reflecting that there is no prior permission taken of authority as found by the learned

Tribunal in pending reference, an attempt is made to change the conditions of service which in view of section 33 of the Act is ordered to be bad

and thereby by order dated 13/6/2008, partially Exh.39 came to be disposed of whereby an injunction order is passed not to change the

conditions of service.

8.2 A further fact is also to be noticed from an order dated 11/8/2008 passed in Special Civil Application No. 9320 of 2008 wherein also, in

paragraph No.7.12, this Court has observed that the Court would not like to express an opinion regarding alleged closure or submissions based on

it and therefore, this grey area which has been kept open is a serious question of fact being disputed and therefore, there is no express opinion

reflected and therefore, relevant observations made in paragraph Nos.7.10 and 7.12 are required to be quoted herein below:

7.10. The factum of closure is a matter of evidence and has to be proved by leading cogent evidence and it cannot be readily inferred.

Undisputedly, no evidence has been yet let-in. Actually, it is disclosed during the hearing that the petitioner Union has not even raised any dispute in

respect of alleged closure has not been referred.

7.12 Thus, this Court would rather refrain from expressing any opinion regarding alleged ""closure"" or submissions based on the said allegations. it

would be risky and unjustified, if not imprudent, to either accept or reject either party"s submissions at this stage.

8.3 Again a perusal of the further record indicates that whether Chapter VB of the Act is applicable or not is a serious dispute prevailing on the

litigation between the parties and therefore, to assume that Chapter VB itself is not attracted at this stage would be intercepting the further process

of examination and adjudication. A perusal of communication of the petitioner establishment to Government Labour Officer dated 3/10/2007 in

which also, in paragraph No.1, a dispute has been raised by the petitioner that as on 27/9/2007, the establishment is not accepting that there were

111 workers and also disputing the fact about applicability of Chapter VB. This communication further indicates that Government Labour Officer

has made a physical visit of the unit and on 29/9/2007 when the visit was made, it was found by Government Labour Officer that workers more

than 100 in number were reflected so much so that names of 111 workers with their designation have been produced at the time of physical

inspection and therefore, on one side there is a dispute that the petitioner establishment is not accepting the fact that there were less than 100

workers in the establishment as against which, whereas Government Labour Officer has reported quite contrary. In addition thereto, a specific

averment is made in the affidavit-in-reply filed by the Government Labour Officer on page No.123 of the petition compilation wherein in paragraph

No.8 of the said reply, it has been stated that as per the workmen''s figure on muster roll, the same was stated to be of 130. Even during

inspection, 109 workmen were very much present and all have put their signatures as recorded by the authorities and therefore, there is specific

assertion by this Government Labour Officer on oath in an affidavit dated 30/6/2009 indicating the fact that there were more than 100 workmen

working in the establishment at the relevant point of time. Relevant paragraph of the said affidavit since are touching to the root of the controversy

is reproduced hereinafter:

8. I say and submit that on 29.09.2008 a show cause notice was issued to the present petitioners as to why criminal action should not be initiated

against them for breach of section 25-O (1) of the Industrial Dispute Act. It is not correct on the part of the petitioner to contend that the number

of workmen employed in the unit were less than 100, since in the information submitted by the petitioner company to the Director, Industrial and

Health Safety, Ahmedabad vide 02.12.2007 under Rule 113 of the Gujarat Factory Rules, number of workmen in the muster roll of the factory at

the time of closure are shown to be 130. In addition to this, on the next date of closure, an inspection of the unit was carried out by the Assistant

Commissioner of Labour and Government Labour Officer, Ahmedabad and during such inspection, 109 workmen were present and all 109

workmen had signed the statements recorded by the authorities. Moreover, in the reply submitted by the petitioner company to the show cause

notice, no material is produced by the petitioner company to sow that the number of workmen employed with it were less than 100. The reply

given by the petitioner company to the show cause notice was however, not found to be acceptable and the same was intimated to the present

petitioners vide communication dated 22.10.2007.

8.4 It is also emerging from the record that vide affidavit-in-rejoinder, the petitioner establishment has again tried to canvass an issue that there

should be an average strength of more than 100 workmen to be maintained in preceding 12 months and that is not reflecting from any of the

record, but then again, this issue is the center of controversy which cannot be gone into at this stage of proceeding in exercise of jurisdiction under

section 482 of Cr.P.C. This attempt made by the petitioner establishment at this stage is not possible to be adjudicated in detail as on the issue of

strength of the workmen, there is a stiff controversy prevailing on record. The petitioner establishment is indicating less than 100 workmen. As

against that, there is a Government record and there is an affidavit of Government Labour Officer as well as the inspection which took place at the

factory premises indicating the converse situation which is nothing but a disputed question of fact which cannot be made the subject matter of

inherent jurisdiction under section 482 of Cr.P.C.

9. There are series of decisions consistently taking a view that in exercise of jurisdiction under section 482 of Cr.P.C., merit or demerit of the

allegation cannot be adjudicated. Further, seriously disputed questions of fact cannot be made a subject matter of exercise of section 482 powers

and in addition thereto, the merit in detail and the effect of statutory provision cannot be adjudicated as if it is a mini trial to be undertaken.

Therefore, these are the consistent propositions of law on exercise of jurisdiction under section 482 of Cr.P.C. which has restrained the Court

from commenting upon this controversy which is encircling around the strength of the workmen which is the main base of the complainant and

therefore, in the considered opinion of this Court, the complaint ex-facie at this stage cannot be throttled in view of this peculiar disputed version of

both the sides. The complaint has indicated that there were more than 100 workmen and based upon which, the authority has initiated the

proceeding which is required to be faced by the petitioner establishment by leading cogent material. This is not a stage at which the process of

criminal proceeding is to be thwarted. While coming to this conclusion, the Court is considering the following propositions laid down by series of

decisions to justify and hence, are reproduced hereinafter.

9.1 The proposition laid down by the Hon''ble Apex Court in a case of Vijayander Kumar And Others v. State of Rajasthan And Another

reported in 2014 (3) SCC 389, wherein on analysing the provision, the Hon''ble Court opined that simply because a civil remedy is available to

the complainant that by itself cannot be a ground to quash the criminal proceedings. The real test is that whether the allegations in the complaint

discloses a criminal offence or not. The relevant paragraphs 11, 12 and 13 are reproduced hereinafter:

11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR

itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the

appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this

Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the

appellants in their defence in accordance with law for due consideration at appropriate stage.

12. Learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and

only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The

real test is whether the allegations in the complaint discloses a criminal offence or not. This proposition is supported by several judgments of this

Court as noted in paragraph 16 of judgment in the case of Ravindra Kumar Madhanlal Goenka and Another v. Rugmini Ram Raghav

Spinners Private Limited [(2009) 11 SCC 529]

13. On considering the facts of the present case it is found that the facts were properly noticed by the High Court on earlier occasion while

examining the petition preferred by the appellants for quashing of FIR of this case. The same view has been reiterated by the High Court in the

order under appeal for not interfering with the order of cognizance by the learned Magistrate. Hence, we do not find any good ground to interfere

with the criminal proceedings against the appellants at this stage. The appeal is, therefore, dismissed.

No costs.

9.2 In another decision on the similar issue, the Apex Court in a case of N. Soundaram v. P.K. Poundraj And Another reported in 2014 (10)

SCC 616 has opined that the power under Section 482 of the Code has to be exercised sparingly and cautiously to prevent abuse of process of

Court and to secure the ends of justice. It should not be exercised to stifle a legitimate prosecution and therefore, unless there are compelling

circumstance, the High Court should refrain itself from exercising the power under Section 482 of the Cr.P.C. Just because the allegations involve

factum of recovery of money, it cannot be concluded that complaint is purely of a civil nature, when other serious allegations here in the complaint

and therefore, the Hon''ble Apex Court in paragraphs 12, 13 & 14 has opined that the High Court should exercise the power under Section 482

of the code in rarest of the rare case, which read thus:

12. Having heard the learned counsel for the parties and upon perusal of the material on record, we find that undisputedly there were some

business transactions between the accused and the husband of the appellant which ultimately led to enmity between them. The statement of Mr. R.

Bhaskar, assistant of the husband of the appellant also supports the allegations levelled against Respondent no.1. He deposed that Respondent

no.1 had threatened him and said that they were taking the files and account books so that the auditor (husband of the appellant) cannot file a case

against him for the money borrowed by him. He also deposed that he had written the list of books on the letter pad of Rajalakshmi Enterprises

under threat and coercion by the accused party. The sizure mahazar shows that on 184/2002 about 51 documents were recovered from the house

of one of the accused. From the statements of the prosecution witnesses and the final report furnished by Sooramangalam Police Station, it is clear

that Respondent no.1, along with several co-accused entered the premises of the appellant and ransacked it. Apart from that, it is evident from the

learned arbitrator''s report that the accused owed some amount to the appellant''s husband. It was also made clear by the learned arbitrator that

the appellant and her husband were ready for an amicable settlement but the accused (respondent 1) was not ready.

13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to

prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate

prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the

allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be

justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold

if the allegations have some substance.

14. An overall perusal of the materials placed before us makes out a prima facie case against the accused which requires to be decided by

conducting a proper trial. At this stage the High Court cannot analyse and meticulously consider the evidence and anticipate whether it will end up

in conviction or acquittal. This is not the stage to decide whether there is any truth in the allegations made but to form an opinion whether on the

basis of the allegation a cognisable offence or offences alleged has been prima facie made out. The guilt or otherwise of the accused can be proved

only after conducting a full-fledged trial. In the circumstances, in our opinion, it is not proper for the High Court to interfere with the proceedings

and quash the final report submitted by the police.

9.3 The present case is filed for the purpose of seeking quashment of FIR and time and again this Court as well as the Apex Court has

propounded that the High Court should not interfere with the criminal investigation. It is precisely because of the fact that after the investigation is

over and submission of report under Section 173 of Cr.P.C., the affected person has always a right and remedy available to challenge the report in

accordance with law and therefore, after investigation being completed, the affected person is not remediless and it should not be assumed that the

investigation will be undertaken not in a fair and free manner and therefore, on the basis of this proposition of law, the Hon"ble Apex Court in the

case of Teeja Devi Alias Triza Devi v. State of Rajasthan & Ors. reported in 2014 (15) SCC 221 held in paragraph 9 as under:

9. We have no hesitation in holding that in the facts of the case, the High Court was not justified in interfering with the police investigation and

quashing the FIR. This is not at all a rare case. Without a thorough investigation, it is not possible or proper to hold whether the allegations made

by the complainant are true or not. Hence, the investigation should have been allowed to continue so that on filing of the report under Section 173

CrPC the affected party could pursue its remedy against the report in accordance with law. Keeping in view the fact that the criminal case was at

the stage of investigation by the police the High Court was not justified in holding that the investigation of the impugned FIR is totally unwarranted

and that the same would amount to gross abuse of the process of the court.

9.4 It is also a sound proposition of law over the period of time prevailing on the exercise of power under Section 482 of Cr.P.C. that if the facts

are seriously in dispute and truth or otherwise of such fact can only be established by leading evidence at the trial and therefore, if the allegations

are serious in nature and are in dispute, then as a normal trend that would not be interfered in exercise of power under section 482 of Cr.P.C. If

the facts and the allegations are highly contested and are interconnected between the civil and criminal proceedings, the High Court should desist

from interfering with the process of investigation and at this stage, Court should not assumed the jurisdiction to curtail the power of investigation.

The decision reported in case of Sesami Chemicals Private Limited v. State of Meghalaya & Others, 2014 (16) SCC 711, the Apex Court

had an occasion to deal with such eventuality and in the backdrop of the facts of the case, the Apex Court propounded which is worth to be taken

note of. The relevant paragraphs 12 and 13 are as under:

12. It is in the background of the above mentioned disputed question of fact, the learned Judge of the High Court thought it fit to quash the FIRs

i.e. Case No. 43(10) of 2011 dated 1210-2011 with a cryptic order. The only relevant portion for the present purpose reads as followed:

(Sanjay Kabra Case, 2013 SCC OnLine Megh 24 Para 8)

8. After hearing the submissions advanced by the learned counsel at Bar, considering the fact and circumstances of the case, I am of the

considered view that, the matter of disputes is purely covered by civil law and not by criminal law, therefore, I do not see any reason that FIR

dated 1210-2011 has any stand in the eye of the law, so it needs to be quashed.

13. We are of the opinion that the petition filed by the contesting respondents under Section 482 of the Code of Criminal Procedure, 1973 is an

abuse of the process of the Court. As already noticed, the facts are seriously in dispute. The truth or otherwise of such facts can only be

established by evidence at the trial. We are, therefore, of the opinion that the High Court erred in quashing FIR No.43(10) of 2011 dated 1210-

2011. We, therefore, set aside the order of the High Court. The first respondent is directed to proceed with FIR No.43(10) of 2011 dated 1210-

2011 in accordance with law.

9.5 Yet another decision delivered by the Apex Court in a case of Taramani Parakh v. State of Madhya Pradesh & Others reported in

2015 (11) SCC 260, wherein at the time of exercising the power under Section 482, the High Court should not examine the merit of the case. At

this stage, while exercising of power under section 482 on the initial stage the merit and demerit of the case is not to be assessed. The question

whether the allegations are true or untrue is a matter of trial and therefore, at the initial stage of the proceedings by exercising the power under

Section 482, the complaint cannot be throttled at the initial stage itself and therefore, relying upon the past precedent as well, the Apex Court in

paragraphs 11 and 12 had an occasion to observe as like this, which is reproduced herein under:

11. Law relating to quashing is well settled. If the allegations are absurd or do not made out any case or if it can be held that there is abuse of

process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the

counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not

generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue. Referring to earlier decisions,

in Amit Kapoor v. Ramesh Chander and Anr. (2012) 8 SCC 4604, it was observed:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and

caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of

Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents

submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent

person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would

end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that

might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the

prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution

and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the

offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and

constitute a ""civil wrong"" with no ""element of criminality"" and does not satisfy the basic ingredients of a criminal offence, the court may be justified

in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to

determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the

allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating

agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a

criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given

by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the

record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be

more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records

with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its

jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of

justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for

administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao

Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC

305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059];

G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC

(Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of

U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995

SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl

Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor

v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3

SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan

Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC

(Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. Krishnan v. Vijay Singh

[(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta

v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of

extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence

has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients

have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

12. In Kailash Chandra Agrawal & Anr. v. State of U.P. & Ors. (Criminal Appeal No. 2055 of 2014 decided on 6.9.2014), it was observed:

8. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they

have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In

Kans Raj v. State of Punjab & Ors. [(2000) 5 SCC 207], it was observed:

5.....A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which,

if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek

conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately

weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best

close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support

allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and

material to support such role.

9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into

the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court''s process, quashing jurisdiction can be

exercised. Reference may be made to K. Ramakrsihna and Ors. v. State of Bihar and Anr. [(2000) 8 SCC 547], Pepsi Foods Ltd. and

Anr. v. Special Judicial Magistrate and Ors. [(1998) 5 SCC 749], State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. [(1992) Suppl

1 SCC 335] and Asmathunnisa v. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Anr. [(2011)

11 SCC 259].

9.6 It has been reiterated time and again by catena of decision that it is not permissible for the High Court in exercise of power under Section 482

to dwell upon the disputed question of fact when the full-fledged trial is available to the parties concerned to prove their guilt and innocence. It is

not for the High Court to examine such disputed question of facts and to arrive at a finding upon it.

This is impermissible and to that effect also there is a decision delivered by the Hon''ble Apex Court in the case of HMT Watches Limited v.

M.A. Abida & Another reported in 2015 (11) SCC 776. The Hon''ble Apex Court observed in paragraphs 11 to 15 as under:

11. In Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited and others [(2008) 13 SCC 678], this Court has made following

observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal

Procedure:

17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well

settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known

legal principles involved in the matter.

xxx xxx xxx

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction.

Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of

unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal

proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While

we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases

are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the

one hand should not encourage such a practise; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is

otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be

maintainable.

12. In Rallis India Limited v. Poduru Vidya Bhushan and others, 2011 (13) SCC 88, this Court expressed its views on this point as under:

12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The

High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead

evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date

the respondents ceased to be the partners of the firm.

13. In view of the law laid down by this Court as above, in the present case High Court exceeded its jurisdiction by giving its opinion on disputed

questions of fact, before the trial court.

14. Lastly, it is contended on behalf of the respondent no.1 that it was not a case of insufficiency of fund, as such, ingredients of offence punishable

under Section 138 of the N.I. Act are not made out. We are not inclined to accept the contention of learned counsel for respondent no.1. In this

connection, it is sufficient to mention that in the case of Pulsive Technologies P. Ltd. v. State of Gujarat [(2011) 13 SCC 88], this Court has

already held that instruction of ""stop payment"" issued to the banker could be sufficient to make the accused liable for an offence punishable under

Section 138 of the N.I. Act. Earlier also in Modi Cements Ltd. v. Kuchil Kumar Nandi, 1998 (1) CTC 402, this Court has clarified that if a

cheque is dishonoured because of stop payment instruction even then offence punishable under Section 138 of N.I. Act gets attracted.

15. For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by

the appellant in respect of offence punishable under Section 138 of the N.I. Act, in exercise of powers under Section 482 of the Code of Criminal

Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before trial court, after recording of the

evidence, can be better appreciated.

9.7 Even in recent pronouncement also, the Allahabad High Court relying upon the decision of the Apex Court in the case of O.M. Prakash

Shayamdasani and 3 others v. State of U.P. and another reported in 2016 Law Suit(All) page 2150 has held that Courts are not expected

to conduct a roving and fishing inquiry into credibility of material at this stage and relying upon the decision of the Apex Court, Court the Hon''ble

Supreme Court refrained from exercising jurisdiction. Several decisions have been considered by the Allahabad High Court. However, only

relevant part in paragraph No. 14, which is based on series of decisions, is reproduced hereunder:

The Courts are not expected to conduct roving and fishing inquiry into credibility of material at this stage. The trial court is also not required to

evaluate the available evidence on merits at this stage or to conclude on the merits of defence case at this stage.

Therefore, looking to these well defined proposition of law for exercise of inherent jurisdiction under section 482 of Cr.P.C. of recent time, the

Court is not inclined to entertain plea of the petitioner establishment at this stage of proceedings.

10. Now keeping these propositions in mind, if the relevant decisions cited by both the sides are perused, no deviation from the aforesaid

propositions is possible and therefore, taking note of these decisions, which have been cited, the same are being dealt with hereinafter. Before

dealing with these decisions which have been cited by the parties to the proceeding, one proposition kept in mind by this Court is framed by the

Hon''ble Apex Court in case of Narmada Bachao Andolan v. State of Madhya Pradesh; reported in 2011 Law Suit (SC) 532 : (2011)7

SCC 639 wherein it has been propounded that doctrine of precedence would depend upon the factual matrix of a case and therefore, if facts are

different, it would make a world of difference. The said proposition laid down by Apex Court catch not of it is reproduced herein below:

Constitution of India--Art 141--doctrine of precedence--reliance on without ascertaining all material facts--not proper, judgment of Court is not

to be read as statute, as it is to be remembered that judicial utterances have been made in setting of facts of particular case--one additional or

different fact may make world of difference between conclusions in two cases--therefore, disposal of cases by blindly placing reliance upon

decision is not proper.

10.1 The learned Senior Counsel, Mr. K.M. Patel, has cited following decisions on the issue and thereby contended that shifting is not a closure at

all:

1) 2002 II CLR 902 (Bom. High Court) Innovations Garment Ltd. v. S.K. Singe & Anr.

2) 1993 I CLR 987 (M.P. High Court) Fertilizer Corporation of India v. Hindustan Fertilizer Corpn.

3) 2008 I CLR 501 (Bom. High Court) Nicholas Piramal India Ltd. v. Nicholas Employees Union

4) 1993(67) FLR 1151 Hindustan Lever Employees'' union v. The State of Maharashtra and ors.

5) AIR 1963 SC 569 (V 50 C 89) Management of Express Newspaper Pvt. Ltd. v. The Workers and others

There is no dispute about these propositions but at the same time, as this issue is kept open by the Coordinate Bench of this Court, as referred to

above, it is hardly possible for this Court to jump to a conclusion that Vatva unit is not closed down but it is merely shifted. The voluminous

documents which are referred to would indicate that Bavla plant at Haryana was not a newly set up plant. The said plant was very much in

existence prior to closure of this Vatva unit and it is not coming out exactly from the record that the entire plant is getting shifted from Vatva to

Baval. On the contrary, notices which have been issued to the employees indicate that Vatva Unit is closed down on account of financial crunch

and several other circumstances stated in the notices and the workers have been directed to report at Bavla plant at Haryana abruptly and

therefore, this mixed question of fact whether this amounts to a closure of unit or amounts to shifting of an industrial undertaking is the subject

matter before the Court in the main proceeding and therefore, at this stage sitting in an inherent jurisdiction under section 482 of Cr.P.C., it would

not be safe to arrive at a specific conclusion and to indicate and hold that this is not either a closure or merely a shifting. The aforesaid proposition

is not disputed but the ratios which have been carved out on this decision are based upon the peculiar facts and circumstance in the proceedings

which were initiated under the writ jurisdiction and therefore, the aforesaid judgments are of no avail to the petitioners at this stage of the

proceeding and therefore, considering these set of circumstances, the Court is of the considered opinion that this is not a stage where such action

on issue which is seriously debatable and contested can be finally concluded in criminal proceeding where the scope of inquiry of this Court is very

limited. This Court is, therefore, of the opinion that the aforesaid judgments are not applicable to the facts on hand.

10.2 Another proposition which has been cited by learned counsel for the petitioners that when a civil remedy is available and when any action

entails civil consequences to launch a criminal prosecution is nothing but a clear example of abuse of the process of the Court. Following decisions

are referred to on this contention to substantiate by the learned counsel for the petitioners:

1) AIR 1988 SC 709 Madhavrao Jiwaji Rao Scindia and anr. v. Sambhajirao Chandrojira Angre and others

2) (2009) 3 SCC 78 V.Y. Jose & anr. v. State of Gujarat and ors.

3) (2005)5 SCC 51 Haldia Refinery Canteen Employees Union and others v. IOC Ltd. and ors.

4) (1997)1 SCC 556 Raj Kumar Gupta v. Lt. Governor, Delhi & ors., para 16.

The first case which has been cited related to this contention is of Madhavrao Scindia (supra) when the Apex Court was examining the criminal

proceedings initiated in respect of criminal breach of trust and the controversy arraigned in that case was related to inheritance in the property. The

dispute is centering around ""Shrikrishna Madhava Trust"" wherein there was an interse dispute from amongst the trustees with respect to affairs of

the trust and therefore, the Court was examining the said dispute related to the tenancy as well as related to the trust property and essentially there

was a dispute amongst the trustees and in that context, the Hon''ble Supreme Court has laid down proposition what test is to be applied when

Court is confronted with a situation. Paragraph No.709 reflecting the proposition reads thus:

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to

whether the un-controverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction

are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

In this proposition laid down by the Apex Court, the test which was to be applied as propounded is whether on the basis of the un-controverted

allegation, prima facie offence is made out or not. Whereas here, there appears to be no un-controverted allegation. On the contrary, the

allegations are seriously in controversy and which cannot be examined without leading any evidence on it and therefore, respecting the proposition

laid down by the Apex Court, the Court is of the opinion that this proposition is not applicable in the background of present facts on hand. It is a

settled position of law that if the facts are distinct, it would make a world of difference in applying the ratio laid down by the Apex Court and

therefore, keeping this proposition in mind, the Court is of the opinion that this decision reported in Madhavrao Scindia (supra) is of no avail to the

petitioners. Similarly, another decision which has been pressed into service on this very issue in which the Court was examining that essentially the

dispute involved is that of civil nature and therefore, should not be allowed to be a subject matter of criminal proceedings and the said civil litigation

cannot be allowed to be utilised as a short cut to execute any non-existent decree and therefore, the ratio laid down by the Apex Court in V.Y.

Jose (supra) is again not attracted in the background of this Court. Another case which has been tried to be relied upon is the case of Haldia

Refinery Canteen Employees Union(supra) wherein the learned counsel has submitted that here also, there was a labour dispute entangled in the

litigation and the issue whether on statutory canteen managed by the contractor, the relationship of workman with the establishment was the centre

of controversy. In this case, two settlements have been arrived at between the canteen contractor and its workmen before the Assistant Labour

Commissioner to which, the respondent management was not a party to the proceedings and therefore, the status of a workman was the centre of

controversy in the said case. The said decision was delivered in Civil Appeal No.658 of 2008 which has nothing to do with any criminal

proceeding and therefore, the citation which was tried to be pressed into service cannot be gone into while examining the issue whether in the

background of present facts on hand, inherent jurisdiction is to be exercised or not. Another decision which has been tried to be relied upon by

learned Senior Counsel is that of Raj Kumar Gupta (supra) wherein the issue was as to who can be authorised under section 34(1) of the Act by

appropriate Government to file the complaint. Here, this controversy is not the subject in issue and therefore, the present judgment is also not of

any avail to the case of the petitioners. All these issues can be gone into during the course of trial of the complaint and therefore, this is not the case

at which prosecution cannot be allowed to prove the case initiated against the petitioners.

10.3 Another decision which has been relied upon is with respect to a vague complaint and by referring to two decisions, a contention is raised that

present complaint is also a complaint in vague and there is no justifiable material to take cognizance of the complaint and therefore, on the basis of

such a vague complaint, the petitioner establishment cannot be dragged into litigation. These decisions are as under:

1) 2006(1) GLH 83 Y.B. Trivedi and Ors. v. K.V. Dabhi, Food Inspector & Ors.

2) Judgment dated 01.09.2008 passed in Criminal Misc. Appln. No.14462 of 2006 (Coram: Hon''ble Ms. Justice H.N.Devani,J.) Tata Chemicals

Ltd. & Ors. v. Shri B.C. Trivedi, Govt. of the Asst. Commissioner & Anr. In case of Y.B. Trivedi (supra), the case was in respect of an offence

alleged for violation of the provisions of Prevention of Food Adulteration Act and it was an issue related to granting of sanction in mechanical

exercise of power without application of mind and in gross and inordinate unexplained delay of four years and therefore, in such a gross case, the

Court was confronted with the situation whether Court can exercise jurisdiction under section 482 of Cr.P.C. or not. Here, the case is not again of

delayed one and the complaint has specifically spelt out that prima facie, there is a violation of the provisions contained in Chapter VB of the Act

and therefore, such violation is required to be examined at appropriate stage and for that purpose, the complaint is filed. A bare reading of the

complaint, may be brief, reflects that the specific element which is alleged to initiate the criminal proceeding is very much reflected and therefore,

when such specific allegation is asserted, the same being an issue about examination of the factual data, at this stage of the proceedings, cannot be

intercepted and therefore, the ratio laid down by this Court in Y.B. Trivedi (supra) is not applicable as a straitjacket formula. Similarly, in case of

Tata Chemicals Ltd. (supra), which was a judgment dated 1/9/2008 delivered in Criminal Misc. Application No.14462 of 2006 by a learned

Single Judge of this Court, the facts are related to violation of section 25U of the Act and therefore, since it is related to a violation of section 25U,

some reference is required to be made of this case in detail.

In Tata Chemicals Ltd. (supra) decided by a learned Single Judge of this Court, it is appearing that the relevant company of that case was

registered under the provisions of the Companies Act and was engaged in the business of manufacturing soda ash, salt and other chemicals. The

petitioner company of that case has introduced a scheme of voluntary retirement for its employees and upon introduction of that scheme of

voluntary retirement, some organisational changes have taken place wherein as many as 170 workers came to be transferred and against some six

workmen, who also came to be transferred from department to the other, criminal case came to be initiated. It was alleged in the said case that the

Government Labour Officer sought authorisation of Labour Commissioner for filing criminal case against the petitioner establishment under section

34 of the Act and then granted authority to file the criminal case. Based upon which, the criminal case was registered and the learned J.M.F.C.,

Dwarka, was pleased to issue summons upon taking cognizance in the complaint. In the said case, it was alleged that transfer of a workman cannot

be said to be unfair labour practise which would attract the provisions of the Act and therefore, in the said case, the workmen were transferred

from one department to the other. Whereas in the present case on hand, no such situation is prevailing. Of course, in the said decision, the learned

Single Judge of this Court has relied upon the decision of the Apex Court in case of State of Haryana v. Bhajanlal, 1992 (1) SCC 335 and

found that categories which have been laid down in the said decision were attracted, but as the same are not constituting any offence, the complaint

came to be quashed. However, here the facts on hand are such where there was an allegation of specific violation of section 25(O). It was also

clearly spelt out by the report of Government Labour Officer as well upon physical inspection of factory premises that there were more than 100

workers working in the factory and therefore, prima facie the statutory provisions are violated as it is un-controverted on record that no prior

permission was obtained by the petitioner establishment and therefore, the statutory requirement, which is envisaged under the provisions of the

Act, has not been observed by the petitioner establishment. Therefore, the case on hand is quite distinct from that of the above referred case and

therefore, in the opinion of this Court, the same has no bearing to the controversy and therefore, the same cannot be applied as a strait-jacket

formula. Considering this set of circumstance also, this Court is of the opinion that at this stage of the proceeding, section 482 powers are not

possible to be exercised as facts are not permitting the same.

10.4 Learned Senior Counsel for the petitioners has then relied upon the decision reported in case of Excel Wear v. Union of India reported in

AIR 1979 SC page 25 and then submitted that validity of section 25(O) of the Act has been upheld by the Apex Court. But to this proposition,

there is no dispute or controversy raised by either side and therefore, the reference to this judgment is not relevant to decide the controversy.

10.5 Learned Senior Counsel, Mr. Patel, has also drawn attention to a decision dated 22/4/2013 delivered by a learned Single Judge of this Court

in Special Civil Application No.7262 of 2013 wherein it has been laid down that in case the management is shifting the factory, such closure in that

event is not attracting the provision contained under section 25(O) of the Act. But here again, this is not such a case where such conclusion is to be

derived at this stage and therefore, the same may not be of any help to the stand of the petitioners.

10.6 In addition thereto, learned counsel for the petitioners has drawn the attention to Form No.xxx issued under Rule 82(B)(1) which relates to

the application seeking permission to close down an undertaking and then has submitted that when such kind of form is to be filled in for closure of

undertaking, the particulars relating to termination of workmen are to be mentioned whereas here in the instant case, such termination is not taking

place and therefore, in no case it can be said that there is a closure of undertaking where prior permission is required and in fact, Chapter VB is

not attracted and therefore, there is no case made out by the prosecution. However, this is not the stage to examine this submission.

11. Considering the aforesaid set of circumstances prevailing on record where highly disputed questions of fact are involved in the present

proceedings and since this Court is not conducting mini trial, it would not be possible for this Court to decide as to whether there were 100

workers in the undertaking or whether the case is properly made out or not. However, in the opinion of the Court, this aspect, which is disputed,

requires proper adjudication and therefore, these contradictions and the disputed questions of fact are the matter of trial which cannot be

conducted in exercise of powers under section 482 of Cr.P.C. There are decisions to the effect as stated in earlier part of this judgment that in

exercise of section 482 powers, Court is not going to conduct mini trial and therefore, these disputed questions of fact are to be left open for the

appropriate authority to examine and therefore, even after filing of the charge sheet on completion of investigation, since a proper remedy is very

much available to the petitioner undertaking since the petitioner establishment is not remediless even after framing of the charge, this again is a

circumstance which has waived with this Court not to entertain this petition at this stage of the proceeding and accordingly, the Court finds no merit

in the petition and this being the position, Criminal Misc. Application being devoid of merit deserves to be dismissed with a clarification that the

Court has not examined the merit in detail and the decision is taken in the context of periphery of exercise of powers under section 482 of Cr.P.C.

Since the dispute in which several workers'' future is at stake, the prosecution is expected to take proper steps in pursuance of the complaint as

expeditiously as possible. It is clarified that as this Criminal Misc. Application has not been decided in the context of section 482 of Cr.P.C., the

observations made by this Court in this judgment being made for the purpose of deciding this application may not prejudice either of the parties in

trial or in any other proceedings. Accordingly, Criminal Misc. Application is dismissed by discharging rule and interim relief stands vacated.

12. A.J. SHASTRI, J.

13. FURTHER ORDER

14. After pronouncement of the aforesaid judgment, learned Senior Counsel, Mr. K.M. Patel, requested the Court that since interim relief is

operative throughout the proceedings, same may be extended for a further period of eight weeks, for which, otherside has no objection. Hence,

interim relief granted earlier is hereby extended for a further period of eight weeks from today.