

Pearl Beaverages Ltd. and Others Vs State of Andhra Pradesh and Another

Court: Andhra Pradesh High Court

Date of Decision: June 19, 2000

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 155, 156, 157, 158
Penal Code, 1860 (IPC) â€” Section 420

Citation: (2000) 2 ALD(Cri) 32 : (2000) 3 ALT 585 : (2000) 3 APLJ 194 : (2000) CriLJ 5044

Hon'ble Judges: B. Sudershan Reddy, J

Bench: Single Bench

Advocate: C. Padmanabha Reddy, Amicus Curiae and P. Sridhar Reddy, for the Appellant; Public Prosecutor for Respondent No. 1 and K.V. Bhanu Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Sudershan Reddy, J.

This is an application filed u/s 482 of the Code of Criminal Procedure (for short ""the Code"") to quash the First

Information Report No. 72 of 1999 registered against the petitioners herein u/s 420 of the Indian Penal Code on the file of Gopalapuram Police

Station, Secunderabad, Andhra Pradesh.

2. It may be necessary to notice a few relevant facts before adverting to the question as to whether this Court can quash the very First Information

Report in exercise of its jurisdiction u/s 482 of the Code.

3. The second respondent herein filed a complaint u/s 200 read with 190(1) of the Code in the Court of the X Metropolitan Magistrate at

Secunderabad. In the said complaint, it is inter alia alleged that the respondent-complainant is dealing with the supply of electrical generators and

also dealing in electrical contracts like installation, wiring, fixation etc. Accused No. 1 is the company and accused No. 2 is the Chairman of the

company representing the company. The third accused is stated to be the Director (Finance) of the company. It is alleged that the accused on 11-

12-1996 gave a contract to the complainant herein worth Rs. 60 lakhs for the purpose of installation, fixation and other electrification works at

Guntur. It is alleged that the complainant on different occasions during the pendency of the work received altogether a sum of Rs. 42,00,000/-from

the accused and a balance of Rs. 18,00,000/- was due to be paid to the complainant.

4. It is inter alia alleged that the complainant held negotiations and continuously reminded the accused to pay the amount. But the accused are

alleged to have instructed the complainant to come to New Delhi where the accused gave a draft for Rs. 4,00,000/- to the complainant and forced

him to sign on a bond to the effect that he received a sum of Rs. 4,00,000/-towards full and final satisfaction of the claim. The complainant was put

under pressure and forced to sign the papers. The complainant immediately on 8-12-1997 lodged a complaint with Canaught Palace Police

Station, New Delhi and immediately after coming over to Hyderabad wrote a letter to the accused to settle the matter by paying the balance of Rs.

14,00,000/- but there was no reply from the accused. The complainant got issued a legal notice to the accused on 10-1-1998, but there was no

reply from the accused.

5. It is specifically alleged that the accused intentionally in order to cheat the complainant made him to come over to New Delhi and avoided the

payment of Rs. 14,00,000/- which was still due to the complainant. The accused made the complainant believe even at the earlier stage itself, as if

they were going to pay Rs. 60,00,000/- but having got the work done and work completed, the accused have avoided to pay Rs. 14,00,000/-

only with in intention to cheat the complainant, thereby the accused had the intention to cheat the complainant and avoided to make the payment of

Rs. 14,00,000/-.

6. The learned X Metropolitan Magistrate, Secunderabad having received the complaint without taking cognizance of any offence directed the

investigation in exercise of power conferred by Section 156(3) of the Code. The Police, Gopalapuram having received the order and complaint on

2-4-1999, registered a case in Crime No. 72 of 1999 u/s 420 of the Indian Penal Code and took up the investigation.

7. The petitioners-accused challenge the very registration of the First Information Report on various grounds and pray to quash the registration of

the said crime.

8. Sri C. Padmanabha Reddy, learned Senior Counsel appearing on behalf of the petitioners-accused submits that the complaint filed by the

respondent herein in the Court of the learned X Metropolitan Magistrate, Secunderabad does not reveal commission of any offence and as such

the continuance of proceedings against the petitioner-accused would result in manifest injustice. It is contended by the learned Senior Counsel that

the continuance of the proceedings would amount to harassing the petitioners-accused. According to the learned Senior Counsel, the allegations

and averments made in the complaint into which, an investigation has been ordered by the learned Magistrate, at the most may disclose some

cause of action, which is civil in nature. It is urged that setting the criminal law in motion against the petitioners-accused is nothing but an abuse of

the process of the Court. It is submitted that the proceedings initiated may have to be quashed to secure the ends of justice.

9. Sri O. Kailashnath Reddy, learned Public Prosecutor contends that this Court cannot quash the registration of First Information Report itself in

exercise of its jurisdiction u/s 482 of the Code. It is submitted that any interference by this Court at the stage of registration of First Information

Report itself may amount to interfering with the statutory duty of the police officers to register the First Information Report and investigate the same

in case of a cognizable offence. Sri Bhanu Prasad, learned Counsel appearing on behalf of the second respondent herein supports the submissions

made by the learned Public Prosecutor.

10. Having regard to the nature of contentions, a short but an important question arises for consideration as to whether this Court in exercise of its

jurisdiction u/s 482 of the Code can quash the very First Information Report? If so, as to under what circumstances such report itself could be

quashed by this Court?

11. Before advertng to the said question, it may be necessary to have a look at the broad scheme of the Code of Criminal Procedure relating to

lodging of the First Information Report and the complaint. It may also be necessary to have a look at the provisions relating to the power and

jurisdiction of the Police to investigate into the report, which reveals commission of a cognizable offence.

12. It may be necessary to notice the distinction between the First Information Report and the complaint. The expressions are very often

interchangeably used. Some times even the charge-sheet is equated and understood to that of a complaint and First Information Report.

13. Section 2(d) says that ""complaint"" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this

Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report. Explanation to Section

2(d) says that ""a report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be

deemed to be a complaint; and the police officer by whom such report is made be deemed to be the complainant"". It is also necessary to notice

that Section 2(h) defines the investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer

or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Section 2(r) defines police report means a report

forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173.

14. It is required to notice that Chapter XII deals with the information to the police and their power to investigate. Section 154 of the Code

mandates that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be

reduced to writing by him..... and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government

may prescribe in this behalf. A copy of such information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

Any aggrieved person by a refusal, on the part of an officer-in-charge of a police station to record the information relating to the commission of

cognizable offence may send the substance of such information, in writing and by post, to the Superintendent of Police concerned and if the

information discloses a commission of a cognizable offence, the Superintendent of Police shall either investigate the case himself or direct an

investigation to be made by any police officer subordinate to him and such police officer shall have all the powers of an officer-in-charge of the

police station in relation to that offence.

15. Section 155 commands that an officer-in-charge of a police station upon receiving the information of the commission of a non-cognizable

offence shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State

Government may prescribe in this behalf and refer the informant to the Magistrate. Sub-section (2) of Section 155 declares that no police officer

shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

16. Section 156 of the Code deals with the Police Officer's power to investigate cognizable case and it reads that (1) Any officer-in-charge of a

police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within

the limits of such station would have power to inquire into or try under the provisions of Chapter XIII; (2) No proceeding of a police officer in any

such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to

investigate; (3) Any Magistrate empowered u/s 190 may order such an investigation as abovementioned.

17. Section 157 of the Code prescribes procedure for investigation and it says that an officer-in-charge of police station has reason to suspect the

commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered

to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being

below such rank as the State Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts

and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.

18. Section 173 of the Code mandates that every investigation under Chapter XII shall be completed without unnecessary delay and as soon as it

is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police

report, a report in the form prescribed by the State Government stating - (a) the names of the parties; (b) the nature of the information; (c) the

names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed

and, if so, by whom; (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without

sureties; and (g) whether he has been forwarded in custody u/s 170.

19. Section 190 which forms part of Chapter XIV dealing with the conditions requisite for initiation of proceedings declares that any Magistrate of

the First Class, and any Magistrate of the second class specially empowered in this behalf, may take cognizance of any offence upon receiving a

complaint of facts which constitute such offence, upon a police report of such facts, upon information received from any person other than a police

officer, or upon his own knowledge, that such offence has been committed.

20. Section 200 deals with complaints to Magistrates and the procedure there of Section 200 mandates that any Magistrate taking cognizance of

an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be

reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate, provided there is no need to examine the

complainant, if the same is made in writing by a public servant acting or purporting to act in the discharge of his official duties or a Court has made

the complaint; or if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192 Cr.P.C.

21. A combined reading of all the provisions referred to hereinabove would make it abundantly clear that the complaint is the one which is made

orally or in writing to a Magistrate for his taking action under the Code against the persons named or unnamed relating to commission of an

offence. Such complaint does not include a police report. The First Information Report is the one, which is entered, in the prescribed book by an

officer-in-charge of a police station upon receiving information relating to the commission of a cognizable offence. The persons providing such

information relating to the commission of a cognizable offence to an officer-in-charge of a police station is not a complainant. He is only an

informant and whereas the complainant is the one who files the complaint before any Magistrate which he is entitled to take cognizance of any

offence. The complaint need not relate to the commission of a cognizable offence. It could be a cognizable or non-cognizable offence. The

complainant is the one who files such complaint of facts constituting offences which may be cognizable or non-cognizable.

22. It is also clear that an officer-in-charge of a police station is entitled to investigate into any cognizable case without the order of a Magistrate

and the proceedings of a police officer in any such case shall not be called in question at any stage on the ground that such officer was not

empowered to investigate. It is true that a Magistrate empowered u/s 190 of the Code to take cognizance of any offence may order an

investigation by the Police.

23. An analysis of the provisions referred to hereinabove would make it very clear that no police officer shall investigate into a non-cognizable case

without the order of a Magistrate having power to try such case or commit the same for trial. That is the only limited area dealing with the

jurisdiction of the Magistrate to direct the investigation of a case by a police officer-in-charge of a police station. It is however, true that Section

159 of the Code empowers the magistrate concerned to direct the investigation, upon receiving report u/s 157 of the Code from an officer-in-

charge of a police station relating to the commission of an offence which an officer of the police station is entitled to investigate u/s 156 of the

Code. It means that if a police officer-in-charge of a police station even after satisfying himself that the information received by him reveals the

commission of a cognizable offence, fails to perform his duty and investigate into the same, the Magistrate, upon receiving report u/s 157 of the

Code may direct the investigation or depute a Magistrate subordinate to him to proceed with the preliminary inquiry. The Magistrate may of

course, direct an investigation by an officer-in-charge of a police station even in case where it appears to the officer-in-charge of a police station

that there is no sufficient ground for entering on investigation. The expression "on receiving such report" used in Section 159 evidently refers to the

report contemplated in Section 157(2), stating reasons for not proceeding with the investigation as provided in proviso (a) and (b) of Section

157(1) of the Code because the question of directing an investigation by the Magistrate cannot arise in case where the police officer himself

proceeds to investigate the facts and circumstances of the case after reasonably suspecting the commission of an offence which he is empowered

to investigate u/s 156 of the Code.

24. Thus, it is clear that there is no provision in the Code which would enable any Magistrate or for that matter any Court to interfere with the

jurisdiction of an officer-in-charge of a police station to investigate into a case relating to commission of a cognizable offence. On the other hand, a

qualified power is conferred upon a Magistrate to set the investigation in motion whenever there is a failure of duty on the part of the police officer

to investigate the case. The power conferred upon the Magistrate is positive in nature. It is obvious that under no circumstances, the process of

investigation after registering a first information report relating to commission of a cognizable offence can be interfered with by any Magistrate and

for that matter any Court under the Code of Criminal Procedure. The Code clearly demarcates the jurisdiction and power of a police officer to

investigate into a cognizable offence and the jurisdiction conferred upon the Courts for taking cognizance of a case.

25. The question as to whether this Court in exercise of its jurisdiction u/s 482 of the Code can quash the first information report itself is integrally

and inexorably intertwined with the jurisdiction and power of the police officer to investigate into commission of a cognizable case. Catena of

decisions are referred by the learned Senior Counsel appearing on behalf of the petitioners and as well by the learned Public Prosecutor. The

distinction in law between the powers of the Court to take cognizance of a case and their powers of inquiry and trial on the one hand and the

powers of a police officer to investigate into a case relating to commission of a cognizable offence on the other hand are too well recognized. It has

been observed by higher Courts that function of the judiciary and the police are complementary not overlapping. It has been clearly held that the

Court's functions begin when a charge is preferred before it and not until then. In *Emperor v. Khwaja Nazir Ahmad* AIR (32) 1945 P.C. 18. the

Privy Council speaking through Lord Porter observed that:

In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of

the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if

found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in

matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a

statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the

judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights

by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the

combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function,

always, of course-subject to the right of the Court to intervene in an appropriate case when moved u/s 491. Criminal P.C. to give directions in the

nature of habeas corpus. In such a case as the present-however, the Court's functions begin when a charge is preferred before it and not until then

(emphasis of mine). It has sometimes been thought that Section 561-A has given increased powers to the Court which it did not possess before

that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently

possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are

those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no

cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an

investigation and for this reason Newsam, J. may well have decided rightly in AIR 1938 Mad. 129.

26. In R.P. Kapur Vs. The State of Punjab, . the Supreme Court observed that the inherent power by the High Court u/s 561-A of the Code

(present Section 482) cannot be exercised in regard to matters specifically covered by the other provisions of the Code. It is however, observed

that cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and

accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of

looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be

legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused.

The Supreme Court having laid down the law refused to quash the proceedings.

27. In Kurukshetra University and Another Vs. State of Haryana and Another, . the very same question came up for consideration before the

Supreme Court. In the said case an application u/s 482 Cr.P.C. was filed in Punjab and Haryana High Court for quashing the first information

report registered against the petitioners therein u/s 442 and 452 I.P.C. on filing of the first information report by the University. The High Court

quashed the same at the instance of the accused. On appeal by the University to the Supreme Court, it is held that:

It surprises us in the extreme that the* High Court thought that in the exercise of its inherent powers u/s 482 of the Code of Criminal Procedure, it

could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University

and no proceeding at all was pending in any Court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary

jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in

the rarest of rare cases.

(Emphasis is of mine)

28. In State of U.P. Vs. R.K. Srivastava and Another, . the Supreme Court observed:

It is a well settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not

constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed."" But it is required to notice that in the said

case on the basis of the F.I.R. Police registered a case against the named persons for the offence punishable u/s 120-B, 420, 468 and 471 I.P.C.

and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The criminal proceedings being Crime Case No. 40 of

1983 in the Court of Special Judge, Anti-Corruption was pending against the accused and that proceedings were sought to be quashed. The

Supreme Court observed that the allegations made either in the F.I.R. or in the charge sheet do not show that the accused had acted dishonestly,

that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In the circumstances, the Judgment of the High Court

quashing the criminal proceedings was upheld by the Supreme Court. It was a case of quashing the proceedings on the file of the criminal Court. It

was not a case of quashing the first information report even before the investigation of the case.

29. In Dhanalakshmi Vs. R. Prasanna Kumar and Others, . the Supreme Court observed that:

Section 482 empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on

complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or

is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the

Magistrate it is open to the High Court to quash the same in exercise of the inherent powers u/s 482.

(emphasis of mine).

30. The Supreme Court reversed the order passed by the Madras High Court on findings. There were specific allegations in the complaint

disclosing the ingredients of the offence and the same was taken cognizance of by the learned Magistrate. It was the case where the application

itself was filed after the learned Magistrate took cognizance of the case on a complaint filed by the complainant.

31. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, the Supreme Court after an elaborate consideration of the matter and after

referring to its various earlier decisions observed that:

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of a

Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is

reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the

officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the

commission of an offence which he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157.

The Supreme Court further observed that:

in Section 154(1) of the Code, the Legislature in its collective wisdom has carefully and cautiously used the express "information" without

qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used.

In the circumstances the Supreme Court held that the Police should not refuse to record information relating to commission of a cognizable offence

and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words,

"reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. Of course, the investigation by the

officer-in-charge of a police station would only commence if the officer has the reason to suspect the commission of an offence which he is

empowered u/s 156 of the Code to investigate. The Supreme Court reiterated the principle laid down by it in *State of Bihar and Another Vs.*

J.A.C. Saldanha and Others, wherein it is held that "There is a clear-cut and well demarcated sphere of activity in the field of crime detection and

crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence

over which vests in the State Government..... Once that is completed and the Investigating Officer submits report to the Court requesting the Court

to take cognizance of the offence u/s 190 of the Code its duty comes to an end.

32. The Supreme Court in Bhajan Lal's case (6 supra) having surveyed the whole law relating to the registration of a crime and its investigation up

to the taking cognizance by the Court laid down the principles of law enunciated by the Court in series of decisions relating to the exercise of

extraordinary jurisdiction under Article 226 of the Constitution of India or the inherent jurisdiction u/s 482 of the Code and categories of cases by

way of an illustration whether the power can be exercised to quash the proceedings held as follows:

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by

this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code

which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down

any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myraid kinds of

cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of

the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously Instituted with an ulterior motive

for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. But in the above case, the Supreme

Court set aside the judgment of the High Court quashing the first information report as not being legally and factually maintainable in law and the

entire investigation done in the matter was quashed on the ground that the SHO is not clothed with valid legal authority to take up the investigation

and proceed with the same within the meaning of Section 5-A(1) of the Prevention of Corruption Act. Leave was granted to the State Government

to direct the investigation afresh if it so desires through a competent Police Officer.

33. We may have to notice that a Bhajan Lal's case (6 supra) the High Court itself exercised its power under Article 226 of the Constitution of

India and quashed the very First Information Report. It is in the said proceedings, the Supreme Court refused to quash the First Information

Report but quashed the investigation part of the case on the ground of lack of jurisdiction. It was not an application filed u/s 482 of Cr.P.C. to

quash the First Information Report. It may have to be noticed that even the petition under Article 226 of the Constitution of India has been filed by

Bhajan Lal after investigation and filing of the charge sheet.

34. In Punjab National Bank and others Vs. Surendra Prasad Sinha, the Supreme Court observed that:

Judicial process should not be an instrument of oppression or needless harassment..... There lies responsibility and duty on the Magistracy to find

whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates

offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and

judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be

an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance

of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.

35. In the said case an Advocate Standing Counsel of Punjab National Bank filed a private complaint in the Court of Additional Chief Judicial

Magistrate, Katni for offence u/s 409 and 109/114 of I.P.C. against the Chairman, the Managing Director of the Bank by name and a host of

officers. It appears, the learned Magistrate without advertent to whether the allegations in the complaint prima facie makes out an offence charged

for, obviously, in a mechanical manner issued the process against all the persons. The High Court rejected the request of the accused to quash the

complaint on the findings that the Bank acted prima facie highhandedly. The Supreme Court reversed the same. It is a case of quashing of a

complaint after it was taken, cognizance by the Magistrate without advertent to whether the allegations in the complaint prima facie make out the

offence charged for. It was not a case of quashing the First Information Report.

36. In *Bhaskar Chatteraj v. State of West Bengal* 1991 Cri.L.J. 451. the proceedings initiated against the appellant therein u/s 448 I.P.C. were

quashed by the Supreme Court reversing the decision of the Calcutta High Court refusing to quash the criminal proceedings initiated against the

appellant for the offence u/s 448 I.P.C. the Supreme Court held that the entire proceedings initiated as against the appellant is only an abuse of the

process of the Court. The Court came to such a conclusion having meticulously and carefully gone through the entire reports as well as the

statements of the witnesses recorded u/s 162 of the Criminal Procedure Code during the course of the investigation and the connected records. It

was a case where the Police having investigated the case submitted report u/s 173 of the Cr.P.C. it was not a case where the Court quashed the

very First Information Report.

37. In *State of Himachal Pradesh Vs. Shri Pirthi Chand and another*, the Supreme Court observed that "great care should be taken by the High

Court before embarking to scrutinize the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution

in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an

initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the

prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of the charge-sheet. At that stage it is not the

function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions, which are

considered mandatory, and its effect of non-compliance. The Court has to prima facie consider from the averments in the charge-sheet and the

statements of witnesses on the record in support thereof whether Court could take cognizance of the offence on that evidence and proceed further

with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. It is

observed ""when the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article

226 since efficacious remedy u/s 482 of the Code is available. When the Court exercises its inherent power u/s 482 the prime consideration should

only be whether the exercise of the power would advance the cause of Justice or it would be an abuse of the process of the Court. When

Investigating Officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be

short-circuited by resorting to exercise the inherent power to quash the charge-sheet.

38. It may be required to notice that it was not again a case where the First Information Report itself was quashed in exercise of power u/s 482 of

the Code. On the other hand, the trial Court after considering the charge-sheet by its order dated July 7, 1987 discharged the accused from the

offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The same was confirmed by the High Court and the Supreme

Court disapproved the view taken by the High Court.

39. In *Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others*, . the Supreme Court cautioned that the High Court while disposing of the

application filed u/s 482 of Cr.P.C. should not enter the debatable area of deciding as to which of the version was true, - a course wholly

impermissible. It was a case of reversal of the decision of the High Court's interference in exercise of its jurisdiction u/s 482 of Cr.P.C. quashing

the complaint taken cognizance of by the learned Magistrate u/s 200 of Cr.P.C. It was not a case where the First Information Report was quashed

by the Court. Even quashing of the complaint by the High Court was reversed by the Apex Court.

40. In *Rajesh Bajaj v. State NCT of Delhi* 1999 (1) ALT 301. the Supreme Court reversing the decision of the Delhi High Court quashing the

First Information Report on the premises that the complaint did not disclose the offence observed that ""The High Court seems to have adopted a

strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients u/s 415, IPC. Such an

endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court

to step-in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.

From the judgment, however, it is not clear as to whether the Delhi High Court exercised its jurisdiction under Article 226 of the Constitution of

India or u/s 482 of Cr.P.C, as it appears from the judgment that both the provisions were invoked for quashing the First Information Report. The

Supreme Court however said, it is premature on the part of the Delhi High Court to have quashed the very First Information Report at the stage of

investigation.

41. In *State of Kerala v. O.C. Kuttan* 1999 (1) ALD 488: 1999 (2) ALT 16.4 (DN SC). the Apex Court observed that:

It is too well settled that the First Information Report is only an initiation to move the machinery and to investigate into a cognizable offence and,

therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court

and at that stage it is not possible for the Court to shift the materials or to weigh the materials and then come to the conclusion one way or the

other.

The Supreme Court found fault with the judgment of the Kerala High Court quashing the very First Information Report and observed that ""we have

no hesitation to come to the conclusion that the High Court committed gross error in embarking upon an inquiry by shifting of evidence and coming

to a conclusion.....The High Court certainly exceeded its jurisdiction in quashing the FIR and the investigation to be made pursuant to the same so

far as respondents are concerned."" The observations were so made by the Supreme Court in the context of facts, namely, a Division Bench of

Kerala High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India has quashed the criminal proceedings

as against five of the accused persons named therein, on coming to a conclusion that the uncontroverted allegations made in the FIR and other

statements do not constitute the offence of rape.

42. We may have to notice that the Kerala High Court quashed the very first information report in exercise of its extraordinary jurisdiction under

Article 226 of the Constitution of India and not u/s 482 of Cr.P.C.

43. In *Medchal Chemicals and Pharma (P) Ltd. v. Biological E. Ltd.* 2000 (1) ALT 279: 2000 (2) ALT 49. the Supreme Court reversed the

decision of this Court quashing the complaint and set aside the impugned order by observing that:

Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an

exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the

prosecution. With the lodgment of First Information Report the bail is set to roll and thenceforth the law takes its own course and the investigation

ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither

practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the

complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to

the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to

their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the

concept of justice, which is paramount.

It is further observed by the Supreme Court that:

In a proceeding u/s 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegations made in the complaint

and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness.""

Whatever appears on the face of

the complaint shall be taken into consideration without any critical examination of the same.

It is further observed that:

Be it noted that in the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the

proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge

and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the care and caution to quash the complaint

in exercise of its inherent jurisdiction.

44. In the said case, proceedings on the file of the XVII Metropolitan Magistrate, Hyderabad were initiated against the Biological E. Limited

Under Sections 120-B, 418, 415 and 420 of the Indian Penal Code and upon an application filed u/s 482 of the Criminal Procedure Code, a

learned Single Judge of this Court by judgment dated 15-2-1999 in Criminal Petition No. 5386 of 1998 quashed the complaint itself. That is how

the matter went before the Supreme Court. Be it noted that this Court quashed the complaint on the file of the learned Magistrate. It was not a

case of quashing the First Information Report.

45. In *Sunil Kumar v. Escorts Yamaha Motors Ltd.* 1999 SCC (Cr.) 1466: 2000 (1) ALT 225. the Supreme Court upheld the order of Delhi

High Court quashing the very First Information Report. But from the facts, it is not clear as to whether the Delhi High Court quashed the First

Information Report in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India or in exercise of its jurisdiction u/s 482

of Cr.P.C.

46. In *Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another*, . the Supreme Court while reversing the decision of Patna High

Court quashed the very complaint filed under Secs.406, 420 and 120-B of I.P.C. against the appellants therein on the ground that the allegations

made in the complaint even if they are taken at their face value and accepted in entirety do not make out a case against the accused. The Supreme

Court held that in such a situation continuing the criminal proceedings against the accused will be an abuse of process of the Court. It is observed

that the High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same. It was again a case of

quashing of a complaint in Criminal Case No. 22 of 1996 pending in the Court of the Chief Judicial Magistrate, Siwan. It was not a case of

quashing of the First Information Report.

47. In G. Sagar Suri and Another Vs. State of U.P. and Others, . the Supreme Court while reiterating the principle and the ground on which

criminal proceedings could be quashed by the High Court in exercise of power u/s 482 of the Code allowed the appeal by setting aside the

judgment of the High Court and quashed the Criminal Case No. 674 of 1997 pending in the Court of Chief Judicial Magistrate, Ghaziabad. It was

not a case of quashing of the First Information Report. The Supreme Court observed that:

Jurisdiction u/s 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter

superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not

a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution (emphasis of mine).

For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction u/s 482 of

the Code. Jurisdiction under this Section has to be exercise to prevent abuse of the process of any Court or otherwise to secure the ends of

justice.

48. In P.V. Pavithran v. The State of A.P. 1988 (2) ALT 855. a learned Single Judge of this Court quashed the very First Information Report,

registered against the public servant on the ground that there was an inordinate delay on the part of the investigating agency in completing the

investigation. This Court took the view that the inordinate delay investigation into the case is a ground to quash even the First Information Report.

However, the Supreme Court reversed the judgment in State of Andhra Pradesh Vs. P.V. Pavithran, .

49. In Shaik Rahamathu Basha v. The State of A.P., 1990 (2) ALT 159. this Court took the view that the High Court in exercise of its inherent

power u/s 482 of Cr.P.C. cannot quash an investigation pending before the Police. May be by exercising the jurisdiction under Article 226 of the

Constitution of India, it may interfere.

50. In *S. Sarat Babu Chowdary Vs. Inspector of Police, Crime Investigation Agency and Others*, a Division Bench of this Court observed that

the High Court in exercise of its inherent jurisdiction u/s 482 cannot quash a First Information Report. The Division Bench relied upon the decision

of the Supreme Court in *Kurukshetra University* (3 supra).

51. In *Hasan Ali Khan Vs. The State and Another*, Syed Shah Mohammed Quadri, J. (as his Lordship then was) after an elaborate survey of the

precedents held that the powers of police under the Code of Criminal Procedure to investigate a cognizable offence are wide and unfettered; but

the condition precedent for taking up investigation is that the police must have reason to suspect commission of a cognizable offence whether on

information or otherwise and that can only be when F.I.R. and other material disclose cognizable offence. The learned Judge further held that

where the F.I.R. and other material including the charge-sheet do not disclose any offence, or the proceedings are initiated mala fide or amount to

abuse of the process of Court the criminal proceedings can be quashed by the High Court under inherent power u/s 482 Cr.P.C. which can be

invoked only after initiation of criminal proceedings by filing a charge-sheet but not at the investigation stage. It is further held that where the

investigation is taken up by the police on the basis of the F.I.R. and other material which do not disclose any cognizable offence, or mala fide, or in

colourable exercise of power any person aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution to quash the

F.I.R. and the investigation for in these situations there exists no power of investigation in the police.

52. In *Gangaram Kandaram v. Sunder Chikha Amin* 2000 (1) ALD 625 a Full Bench of this Court observed that "the complaint cannot be treated

as a charge-sheet. Based on the complaints, FIRs were issued. Unless further investigation is made and charge-sheet submitted, it is difficult to

come to a definite conclusion. The power under Article 226 of the Constitution of India ought not to be invoked in such a case..... Unless the

investigation is completed, it cannot be presumed that the complaint does not make out offences.....It would be wholly improper to exercise

jurisdiction under Article 226 even before the investigation is completed and decide these partly legal and partly factual questions." An observation

is also made by the Full Bench that Section 482 of Cr.P.C. cannot be invoked in case where no charge-sheet has been filed.

53. An analysis of the decisions referred to herein above and upon a true and fair construction of the provisions 154, 155, 156, 157, 158, 159,

173, 190 and 200 of the Code of Criminal Procedure, 1973, the following propositions emerge.

(a) There is a clear cut distinction between the information relating to the commission of a cognizable offence given orally or in writing to an officer-

in-charge of a police station and cognizance of offence by a Magistrate, upon receiving a complaint of facts which constitutes offence. Such taking

of cognizance may be upon a police report of such facts; or upon information received from any person other than a police officer. The information

relating to commission of a cognizable offence is bound to be entered by an officer-in-charge of a police station in the prescribed book. Such

reports are called First Information Reports. Person lodging such information relating to commission of a cognizable offence is an informant,

whereas the complaint is the one constituting facts revealing commission of an offence. In the latter case, it is called the complaint and if it is filed by

an individual other than a police officer, it will be known as private complaint.

(b) Every Officer-in-charge of a police station is empowered to investigate any cognizable case without the order of a Magistrate and the

proceedings in any such case shall not at any stage, be called in question on the ground that the case was one which such officer was not

empowered to investigate.

(i) It is also clear that no police officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such cases.

The Magistrate is empowered to take cognizance of any offence in exercise of power u/s 190 of the Code.

(c) An Officer-in-charge of a police station, upon satisfying himself that there is reason to suspect the commission of an offence which he is

empowered u/s 156 of the Code to investigate, he shall forthwith proceed to investigate the facts and circumstances of the case, if necessary, to

make measures for discovery and arrest of the offender.

(d) The power conferred upon the police officer is coupled with duties. Discretion is however given to the Police Officer not to investigate the

case, if it appears to the officer that there is no sufficient ground for entering on investigation, but that statutory power and discretion is to be

exercised fairly and reasonably and in accordance with law. In either case, he is bound to submit a report to the Magistrate u/s 158 of the Code.

The Magistrate, upon receiving the said report, may direct an investigation or hold a preliminary inquiry into the report or otherwise dispose of the

same in the manner provided in the Code. It is clear that the jurisdiction is conferred upon the Magistrate to direct the investigation even in cases

where the Police Officer came to the conclusion that there is no sufficient ground for entering on investigation. This is a limited power conferred

upon a Magistrate to compel the Police Officer to proceed with the investigation. There is no power as such conferred under the Code upon any

Court to otherwise interfere with the process of investigation. The investigating agency is clothed with jurisdiction and freedom to go into the whole

gamut of the allegations and to reach a conclusion of its own. The jurisdiction of an investigating agency cannot be interdicted by any Court, as no

such power is conferred upon any Court by the Code. Investigation of an offence is the area exclusively reserved for an officer-in-charge of a

police station and once that is completed and the officer submits the report before the Magistrate to take cognizance of the offence u/s 190 of the

Code, the duty of the Police Officer comes to an end. Thereafter it is within the exclusive domain of the Magistrate for further proceeding. It is thus

clear that no Court under the Code have any control and power to stifle or impinge upon the proceedings in the investigation and it is only in a case

wherein the Police Officer decides not to investigate the offence, the concerned Magistrate may intervene and either direct an investigation or in the

alternative, he himself can proceed or depute any Magistrate subordinate to him to proceed to hold preliminary inquiry or otherwise dispose of the

case in the manner provided in the Code.

(e) It is thus clear that an officer-in-charge of a police station is bound to record the information relating to the commission of a cognizable offence

in the prescribed book. Discretion is, however, given to him not to proceed with the investigation, if he has reason to believe that there is no

sufficient ground for entering on investigation. Of course, it is the power coupled with the duty which is required to be exercised fairly, reasonably

and in accordance with law. However, condition precedent to the commencement of investigation is the existence of reason to suspect the

commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the First Information Report.

(f) Charge-sheet is the one which is filed in to the Court by the Police after investigation of the case in accordance with the provisions of the Code.

It is the conclusion and final opinion of the Police Officer investigating the case.

(g) Thus there is a clear distinction between the First Information Report and the complaint. There is also a clear distinction between the First

Information Report; complaint and the charge-sheet. They are not one and the same.

(h) The First Information Report cannot be treated as a proceeding pending on the file of any Court as such. Nor can it be equated to that of a

process of any Court. Even the complaint, unless taken cognizance of by a Magistrate, is not a proceeding on the file of any Court. The First

Information Report registered on reference by a Magistrate after receiving the complaint is also not a proceeding on the file of any Court. Such

First Information Report also stands on the same footing as that of the First Information Report registered by a Police Officer, upon receiving the

information relating to commission of a cognizable offence.

(i) Since no power is conferred upon any Court under any of the provisions of the Code, there is no power available in exercise of which this

Court can quash the registration of the First Information Report itself relating to commission of a cognizable offence by a police officer-in-charge of

a Police Station. Likewise there is no provision which empowers any Court under the Code to interfere with the investigation of any cognizable

offence by an Officer-in-charge of a Police Station. The only power conferred upon a Magistrate is to direct an officer of a police station to

investigate the case if the Police Officer failed to exercise his discretion properly and refused to investigate into a cognizable offence.

(j) For the aforesaid very reasons, even a complaint, before it is taken cognizance by a Magistrate, cannot be quashed by this Court. But once it is

taken cognizance of by the Magistrate, it becomes the proceedings on the file of the Court.

(k) Charge sheet is nothing but a report submitted by the Police Officer after the investigation into a cognizable case. The report even after its

submission into the Court does not acquire the character of any judicial proceeding. It is only an administrative act by a police officer in discharge

of statutory duty imposed upon him to investigate into commission of a cognizable case. But once it is taken cognizance by the Magistrate, it

becomes a proceeding on the file of the Court and from that stage, the jurisdiction of a Police Officer investigating the case comes to an end and

the process of Court is set in motion. Therefore, the charge-sheet itself cannot be quashed by this Court in exercise of any power under the Code

including the inherent power u/s 482 of the Code.

54. In the circumstances, this Court is of the clear opinion that neither the First Information Report nor the complaint before it is taken cognizance

by the Magistrate nor the charge-sheet which is nothing but the result of the investigation can be quashed by this Court in exercise of its jurisdiction

u/s 482 of Cr.P.C.

55. The Court in appropriate cases, may interfere and quash the proceedings in a criminal case after the case is taken cognizance by the Magistrate

and at any stage thereafter to prevent abuse of process of any Court or otherwise to secure the ends of justice.

56. This Court in an appropriate cases, may quash the complaint in exercise of its jurisdiction u/s 482 of Cr.P.C. in order to prevent abuse of

process of the Court or otherwise to secure the ends of justice, after it is taken cognizance by the Magistrate either upon a police report of upon an

information received from any person other than a Police Officer.

57. It is well settled that in a society governed by Rule of Law, no absolute power or discretion is conferred upon any statutory authority which

includes the police officer exercising jurisdiction under the Code of Criminal Procedure. The power conferred upon a Police Officer relating to

entering information of commission of a cognizable offence and power to investigate a cognizable offence and the procedure for investigation, is

structured by the provisions of the Code referred to hereinabove. The Code does not give the police officer any carte blanche without legal bounds

either in the province of investigation or in the area relating to the registration of the case. The actions of Police Officer even in the field of

investigation are not wholly immune from judicial review. It is well settled that no information could be registered by a police officer-in-charge of a

police station, unless such information reveals commission of a cognizable offence. No Police Officer shall proceed with the investigation unless he

has reason to suspect the commission of an offence. No Police Officer can refuse to investigate into commission of a cognizable offence unless

there is sufficient ground for not entering into an investigation. Therefore, no unfettered discretion is conferred upon the Police Officer to investigate

or not to investigate into a cognizable offence, the power therefore, be exercised on the condition of which it is granted by the Code.

58. The High Courts exercising jurisdiction under Article 226 of the Constitution of India are clothed with the jurisdiction to judicially review the

exercise of power by a Police Officer in the matter of registration of information and investigation relating to commission of a cognizable offence.

59. In this case, it is not necessary to reiterate as to on what grounds, the decision, action or inaction of a Police Officer could be judicially

reviewed by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The principles are too well known and the

parameters are well defined. (See Bhajan Lal's case (6 supra)).

60. For all the aforesaid reasons, the First Information Report registered against the petitioners u/s 420 of I.P.C. cannot be quashed by this Court

in this petition filed u/s 482 of the Code.

61. The Criminal petition fails and shall stand accordingly dismissed.

62. Sri C. Padmanabha Reddy, learned Senior Counsel with his usual fairness rendered invaluable assistance and the Court acknowledges the

same. The learned Public Prosecutor in an equal display of forensic skills assisted the Court and the Court acknowledges the same.