(2017) 06 AP CK 0044

ANDHRA PRADESH HIGH COURT

Case No: 1367 of 2017

Manish Teegal & Ors.	APPELLANT
Vs	
State of M.P. & Anr.	RESPONDENT

Date of Decision: June 20, 2017

Acts Referred:

- Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
- Code of Criminal

Hon'ble Judges: G.S. Ahluwalia

Bench: SINGLE BENCH

Advocate: Manish Verma, Prakhar Dhengula, Panel Lawyer, Amit Lahoti

Final Decision: Dismissed

Judgement

1. This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. in crime No. 580/2016 registered by Police Station Cantt. Distt. Guna, for offence under Sections 420 of I.P.C. and under Section 3 /4 of Dowry Prohibition Act.

2. The necessary facts for the disposal of the application in short are that the respondent no. 2 lodged a F.I.R. on 29-9- 2016 alleging that She is residing in Guna along with her parents. Her marriage was settled with the applicant no. 1 and in connection with that, the applicants came to Guna on 11-3-2016 and they had stayed in Hotel Satyam. On 12-3- 2016 and 13-3-2016, certain ceremonies including Roka Ceremony were performed and the marriage was fixed for 22- 4-2016. The parents of the complainant had given an amount of Rs. 51,000 and gold ring to the applicant no. 1 in the Roka Ceremony whereas Rs. 11,000 each were given to the 2 MCRC.1367/2017 applicants no. 2, 3 and the sister of the applicant no.1. As the complainant was busy in maintaining law and order situation in Sinhastha Kumbh,

therefore, the date of marriage was postponed for 12-12-2016. Before marriage, the applicants no. 1 and 3 demanded one Creta Car and gold ornaments for the sister and brother-in-law of the applicant no.1 apart from other articles. When the parents of the complainant expressed their inability to fulfill their demand, the applicants insisted that they will have to fulfill their demand. The parents of the complainant also went to Bhopal, where the applicants assured that since, the date of marriage is already fixed, therefore, they should go ahead with the marriage preparations. Thereafter, the parents of the complainant started making preparations for the marriage and at that time, they came to know that by keeping the complainant and her parents in dark, the applicant no.1 has already got married. When the complainant talked to the applicant no.1 in this regard, then it was replied by the applicant no.1 that as the parents of the complainant had refused to fulfill their demand, therefore, he has married with another girl. Thus, it was alleged that even after the Roka Ceremony, the applicants have refused to marry the complainant only because her parents could not fulfill their demand of Creta Car and other articles.

3. On this complaint, the police has registered the offence under Sections 420 of I.P.C. and under Section 3 /4 of Dowry Prohibition Act.

4. Challenging the F.I.R. lodged by the police, it is submitted by the Counsel for the applicants that the complainant is working as a Commandant and under the pressure of the complainant, the F.I.R. has been registered on the basis of false allegations. It is further submitted that in fact the applicants had gone to Gwalior to visit certain places 3 MCRC.1367/2017 of worship and at the request of the complainant they had visited the house of the complainant for breakfast. It is further submitted that in fact the complainant was insisting that after the marriage, the applicant no.1 will be required to go along with her at her transferred places and since, the applicant no.1 refused to do so, therefore, the complainant and her parents got annoyed and therefore, false allegations have been made. It is further submitted that in fact the complainant and her parents were not interested in marriage and since, the applicant no.1 has got married to another girl, therefore, false allegations have been made. It is further submitted that it would be clear from the whatsapp chat between the complainant and the applicant no. 1, that the complainant had accepted her mistakes and therefore, it is clear that in fact it is the complainant who is at fault and because of the misbehavior by the parents of the complainant, the applicants no.2 and 3 decided not to go ahead with the relationship. It is further submitted that even if the entire allegations are accepted, then it would be clear that the allegations have been made out of malafide intentions. It is further submitted that the police is investigating the matter in a one sided manner.

5. Per contra, it is submitted by the Counsel for the State that the investigation is still

pending. The investigating officer is conducting the investigation in a free, fair and impartial manner. At this stage, except submitting that the allegations made by the complainant are false, nothing has been submitted by the applicants pointing out any lapses on the part of the investigating officer. It is further submitted that the Supreme Court in the case of Lalita Kumari Vs. State of U.P. reported in 2014(2) SCC 1, has held that once the complaint discloses the commission of cognizable offence, then the F.I.R. has to be registered and the complaint as made 4 MCRC.1367/2017 by the complainant do discloses commission of cognizable offence.

6. It is submitted by the Counsel for the respondent no. 2, that the whatsapp chats which have been filed by the applicants are Doctored Chats. Further more, the marriage was broken only because of the fact that the parents of the complainant had expressed their inability to fulfill the demand of Creta Car and gold ornaments to the sister and brother-in- law of the applicant no.1. It is further submitted that by keeping the complainant and her parents in dark, the applicant no.1 has performed marriage with another girl.

7. Heard the learned Counsel for the parties.

8. Before adverting to the submissions made by the Counsel for the parties, it would be appropriate to consider the scope of powers of the High Court to quash the F.I.R and investigation under Section 482 of Cr.P.C.

9. The Supreme Court in the case of Satvinder Kaur Vs. State (Govt. Of NCT of Delhi) reported in (1999) 8 SCC 728, has held as under :

> "14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.
>
> 15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the 5 MCRC.1367/2017 investigating officer had no jurisdiction to investigate the matters on the

alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

16. Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the State of Kerala v. O.C. Kuttan reported in (1999) 2 SCC 651 to the following effect: (SCC pp. 654-55, para 6) "Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a 6 MCRC.1367/2017 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 sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of U.P. v. O.P. Sharma reported in (1996) 7 SCC 705 a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet

another three-Judge Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada reported in (1997) 2 SCC 397 where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole.""

10. In the case of Padal Venkata Rama Redeey Vs. Kovvuri Satyanarayan Reddy reported in (2011) 12 SCC 437, the Supreme Court has held as under :

"31. We have already pointed out various principles and circumstances under which the High Court can exercise inherent jurisdiction under Section 482. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in Bhajan Lal reported in (1992) SCC (cri) 426. The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great 7 MCRC.1367/2017 caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. The statement of witnesses made on oath to be verified in full and materials put forth in the charge-sheet ought to be taken note of as a whole before arriving at any conclusion. It is the material concluded during the investigation and

evidence led in court which decides the fate of the accused persons."

11. In the case of Mosiruddin Munshi Vs. Md. Siraj reported in AIR 2014 SC 3352, the Supreme Court has held as under :

"6. Yet again in Mahesh Chaudhary v. State of Rajasthan (2009) 4 SCC 439 this Court stated the law thus:

"11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."

12. The Supreme Court in the case of Sushil Suri Vs. CBI reported in (2011) 5 SCC 708 has held as under :

"18. In Dinesh Dutt Joshi v. State of Rajasthan (2001) 8 SCC 570, while explaining the object and purpose of Section 482 CrPC, this Court had 8 MCRC.1367/2017 observed thus: (SCC p. 573, para 6)

"6. ... The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

19. Recently, this Court in A. Ravishankar Prasad (2009) 6 SCC 351, relied upon by the learned counsel for CBI, referring to several earlier decisions on the point, including R.P. Kapur AIR 1960 SC 866, State of Haryana v. Bhajan Lal 1992 (Supp) 1 SCC 335, Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 395 B.S. Joshi, (2003) 4 SCC 675 Nikhil Merchant, (2008) 9 SCC 677 etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case.

20. It has been further observed that: (A. Ravishankar Prasad case (2009) 6 SCC 351

"23. ... The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material."

13. In the case of State of A.P. Vs. Vengaveeti Nagaiah reported in AIR 2009 SC 2646, it has been held as under :

4. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages 9 MCRC.1367/2017 three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law.

That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts,

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

5. In R.P. Kapur v. State of Punjab (AIR 1960 SC 10 MCRC.1367/2017 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 (Supp)(1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

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

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

(3) Where the uncontroverted allegations made in the F.I.R. 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 under Section 155(2) of the Code.

(

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a 12 MCRC.1367/2017 legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases

in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding."

13 MCRC.1367/2017

14. The Supreme Court in the case of Rajiv Thapar Vs. Madan Lal Kapoor reported in (2013) 3 SCC 330 has held as under :

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

15. In the case of R. Kalyani Vs. Janak C. Mehta, reported in (2009) 1 SCC 516, it has been held by Supreme Court as under :

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal 14 MCRC.1367/2017 proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

16. The Supreme Court in the case of Lalita Kumari Vs. State of U.P. reported in (2014) 2 SCC 1 has held as under :

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. 120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further. 120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the 15 MCRC.1367/2017 information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The

category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months'' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. 120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

17. Thus, it is clear that where the complaint discloses the commission of cognizable offence, then it is obligatory on the part of the police authorities to register the F.I.R.

18. Coming to the facts of the case, it has not been submitted by the Counsel for the applicants that the allegations made in the complaint donot disclose the commission of cognizable offence, however, the entire arguments were based on the foundation that the allegations made in the complaint were false. It is well established principle of law that at the time of considering the prayer for 16

MCRC.1367/2017 quashing the F.I.R. and the investigation, the correctness of the allegations made in the complaint cannot be questioned. It is a matter of investigation and the Trial. The defence of the accused persons cannot be considered to stifle the legitimate prosecution, unless and until the material produced by the accused is of sterling and impeccable quality. If the allegations made in the F.I.R. are considered, then it would be clear that the specific allegation has been made against the applicants that after the Roka ceremony was performed, the applicants made demand of Creta Car and gold ornaments for the sister and brother-in-law of the applicant no.1 apart from other articles, and when the parents of the complainant expressed their inability to fulfill the demands made by the applicants, the marriage was broken and the applicant no.1 got married with another girl, by keeping the complainant and her parents in dark. Thus, it cannot be said that the allegations as made in the F.I.R. donot disclose commission of cognizable offence.

19. The Counsel for the applicants relying on the judgment passed by the Supreme Court in the case of State of Haryana Vs. Bhajanlal and others reported in 1992 (Supp) 1 SCC 335 submitted that as the allegations have been made by the complainant with malafide intentions, therefore, the F.I.R. and investigation should be quashed.

20. So far as the malafides of the complainant is concerned, the Supreme Court in the case of Renu Kumari Vs. Sanjay Kumar and Others reported in (2008) 12 SCC 346 has held as under :

> "9. "8. Exercise of power u/s. 482 of CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give 17 MCRC.1367/2017 effect to an order under Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law.
>
> That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts,

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

9. In R.P. Kapur V/s. State of Punjab, 1960 3 SCR 388 this Court summarised some 18 MCRC.1367/2017 categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335). A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows:

(SCC pp.378-79, para 102)

''(1) Where the allegations made in the first 19 MCRC.1367/2017 information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

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

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

11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the 20 MCRC.1367/2017 highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged

at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings".

(See Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (1992 Supp (1) SCC 222), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995(6) SCC 194) , State of Kerala v. O.C. Kuttan (1999(2) SCC 651), State of U.P. v. O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999 (8) SCC 728) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259).

The above position was again reiterated in State of Karnataka v. M. Devendrappa (2002) 3 SCC 89, State of M.P. v. Awadh Kishore Gupta (2004) 1 SCC 691 and State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540, SCC pp. 547-50, paras 8-11."

21. Thus, it is clear that where the complaint discloses the commission of cognizable offence, then the malafides of the informant, if any, also becomes secondary and the legitimate prosecution cannot be quashed.

21 MCRC.1367/2017

22. It is next contended by the Counsel for the applicants, that the police is conducting a one sided investigation. As the investigation is still pending and nothing has been placed on record to show that the police is not conducting the investigation in a free, fair and impartial manner, it cannot be said that the police is conducting the investigation in a one sided manner and not in a free, fair and impartial manner. Even otherwise, it is the statutory duty of the investigating officer to conduct the free, fair and impartial investigation.

23. Thus, considering the facts and circumstances of the case, this Court is of the view that the complaint made by the complainant, discloses the commission of cognizable offence and as the investigation is still in progress therefore, the F.I.R. and investigation cannot be quashed.

24. Before parting with the order, this Court finds it appropriate to mention that certain observations have been made considering the submissions made by the Counsel for the applicants, and the Trial Court should not get prejudiced by any of the observation made by this Court as this case is being decided considering the limited scope of interference at the stage of F.I.R. and investigation.

25. With aforesaid observation, the application is dismissed being devoid of merits.