

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No.758/2017

Reserved on: 06.12.2023
Pronounced on: 30.12.2023

Pritam Chand alias Pritam Singh, age 66 years
S/o Ram Krishan
R/o Akalpur Morh, Lower Muthi, Jammu,
Ownjer, Editor & Publisher,
NAWA-I-WAQT Azeem
Daily News Paper.

..... Appellant/Petitioner(s)

Through: - Mr. Ajay Sharma Advocate

v/s

Dr. Kamal Saini
S/o Sh. B.B.Saini,
R/o H.No.214-A,
Sainik Colony, Jammu.

Through:- Mr. Anil Sethi Advocate.

Coram: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

1. Petitioner through the medium of the present writ petition is seeking quashing of the proceedings /complaint filed by the respondent against the petitioner for offences punishable under Sections 499, 500, 501, 502 RPC and order dated 27.03.2017 passed by the Court of learned Judicial Magistrate 1st Class/City Judge, Jammu (for short 'trial Court')
2. The aforesaid complaint is sought to be quashed by the petitioner in this petition precisely, on the following grounds:

(i) That even if the allegations in the complaint and the statement of the complainant/respondent no.1 herein are taken at their face value and accepted

in their entirety still no case is made out against the petitioner much less offence under section 499,500 RPC. Not only this, the allegations in the complaint and the statement of the complainant and witness do not constitute any offence and the pendency of the complaint/ proceedings before trial court amounts to abuse of the process of law and are required to be quashed on this ground alone;

(ii) The allegations made against the petitioner in complaint are so absurd and inherently improbable on the basis of which no prudent person can lead to the conclusion that there are sufficient grounds to proceed in the present complaint;

(iii) That though the respondent has filed complaint U/s 499, 500 RPC but the court below took the cognizance of offence U/s 499, 500, 501 & 502 RPC though there was no material before the court below to take the cognizance, but despite that the court below took the cognizance of the offence which prima facie are not made out against the petitioner;

(iv) That all the necessary ingredients of the alleged offence are missing and the continuance of the proceedings shall be an exercise in futility leading to unnecessary harassment to the petitioner and abuse of the process of court;

(v) That viewed from any angle the complaint and proceedings before the court below is per-se illegal and contrary to the provisions of the law and cannot stand the principles laid down by the apex court;

(vi) That the respondent has filed the complaint with an oblique motive to victimize the petitioner and to harass him which is not permissible under law as per the law laid down by the Hon`ble Apex Court in Bhajan Lal's case;

(vii) That the news items published in the news paper were based on information supplied to the petitioner under the provisions of J&K Right to Information Act and the same are nothing but only truth. Since the news item on the basis of which the respondent has filed the complaint,

were published on the basis of information supplied to the petitioner by the concerned department as such there was no reason for the petitioner to disbelieve them and the petitioner bona fide believed them to be true and publish it in the news paper as such no offence is said to be committed by the petitioner as the same falls within the exception 1;

3. Briefly stating the facts are that the respondent/complaint filed a complaint under Sections 499, 500, 501, 502 RPC against the petitioner herein wherein he alleged that the respondent/complainant has remained a highly decorated, honest and brave officer and has earned impeccable respect in the society and is respected by police force, people of the civil society and baradari of the complainant. The petitioner has been deliberately and maliciously carrying out false, scandalous and defamatory news items against the complainant in his newspaper. He has also been deliberately and with ulterior purposes carrying out a malicious campaign to cause damage to his reputation. The name and goodwill enjoyed by him in the society has been extensively damaged because of the news items carried by him in his newspaper. This newspaper namely Nawa-e-Waqt has very thin publication but has he made it a point to distribute in the close circle of the complainant on each day when the newspaper carries malicious news items against him. All this has been done with the intention to harm the reputation of the complainant.
4. The trial Court after recording the statement of the complainant and the witness and taking into consideration the allegations and the documents attached with the complaint took the cognizance and issued process against the petitioner.

5. The learned counsel for the petitioner submits that the trial Court has wrongly taken the cognizance though there was no material placed before it to make out a case for offences punishable under Sections 499, 500, 501, 502 RPC. The allegations contained in the complaint and the statement of the complainant and his witnesses do not constitute any offence. The necessary ingredients are missing and the respondent has filed the complaint with an oblique motive to victimize the petitioner and to harass him. The news items published in the newspaper were based on information supplied to the petitioner under the provisions of J&K Right to Information Act and the same are nothing but only truth. The news item on which the complainant has filed the complaint were published based on information provided to the petitioner by the concerned department as such, there was no reason for the petitioner to disbelieve. Petitioner bonafidly believed them to be true and published it in the newspaper, as such no offence is said to be committed by the petitioner as same falls within the exception as provided under Article 19 (1) (a) of the Constitution of India.
6. In support of his contention he has relied upon 2010(5) SCC 600, CRMC No.289 of 2018, I.A No.1/2018 & 2/2018 dated 23.8.2021 titled *Asif Iqbal Naik v State of J&K*, 2021(6)JKJ(HC) 78, and 2013(2) SriLJ 705.
7. Learned counsel for the respondent submits that the news item carried by the petitioner would show that the petitioner has published such news items with intention to cause damage to the reputation of the respondent. Such news items carried do not fall within any

exception as provided under Article 19 (1) (a) of the Constitution of India. He submits that the petitioner has no right to tarnish or damage the reputation of the petitioner only by claiming that he has published the news items in the newspaper on the information. The respondent has fundamental right to reputation. He submits that the news items carried have no substance nor such publications are based upon any fact. Such information cannot be said to be the publications based upon any information. The right to information Act cannot be used as a tool to tarnish the image of the respondent. The defamatory statements have been published by the petitioner under the garb of freedom of speech and expression which right cannot be said to include right to defame anybody without any proof.

8. I have considered the complaint, documents placed on file, grounds taken in this petition as well as the arguments put forth by the learned counsel for the parties.
9. So far as the judgments relied upon by the petitioner are concerned, in the facts and circumstances of the case same do not lend any help to him so far as this petition is concerned.
10. Statements published by the petitioner in his news paper, which are said to be defamatory and which according to the respondent caused damaged to his reputation are as under:

“23 Jan 2014- “Rags to riches story” of IGP Saini who publicly claims to be “Honest”.

25 April 2014-“Accused gets Gun license as uncle “SP Border” misuses his official position”

26 April-“Govt. land at Sarora “grabbed” by retd. IGP Kamal Saini, Domana Police dragging feet to register FIR”

01 May 2014-“Isn` t it a misleading property statement of IGP (retd) Kamal Saini”

20 May 2014-“Violating police norms, IGP (retd) Kamal Saini appointed 1186 near and dears as SPOs”

22 May-“The Dishonest Deal: Kamal Saini gave out of promotion of his sister`s son-in-law when he was SP, Poonch”

21 Feb 2017-“Crime branch Jammu failed to book retired IG Kamal Saini: ‘not admitted’ enquiry despite proofs’

11. The press must refrain from publishing contents in the newspaper that are manifestly defamatory in nature against an individual. The content published should be duly verified and there should be sufficient reason to believe that it is true and serves the public good. Truth is no defence for publishing defamatory material against a private citizen where no public interest is involved. Furthermore, the press has the right to expose cases of corruption and irregularities in public bodies as a custodian of public interest but such reporting should be based on irrefutable evidence, published after due inquiry and verification from the concerned sources and should include the version of the person or authority being commented upon. In *Subramanian Swamy v. Union of India, Ministry of Law and Ors.* 2016 SCC Online SC 550, it has been held as under:

“ In a democracy an individual has a right to criticize and dissent, but this right under Article 19(1)(a) is not absolute and he cannot defame another person as that would offend victim`s fundamental right to reputation which is a facet of Art.21 of the Constitution. There needs to be a proper balancing of the two fundamental rights.”

12. The respondent/complainant claimed that false and defamatory imputations were made against him without any proof or verification. Examining the language used in the current newspaper article and against Kamal Saini this Court can firmly conclude that the headlines are overriding and in contravention to the contents of the material alleged to have been received by the petitioner. The articles, when read in totality, would indicate that its tenor is clearly to defame the complainant by terming him as a ‘corrupt person’ who throughout has misused his position of power and is a dishonest person.
13. The mode and manner in which the headlines were drafted of the newspaper articles clearly reflects the intention of the petitioner which was to defame the respondent. The material collected by the petitioner was not published with purely the information received but on the contrary the petitioner’s own interpretation and opinion was also mixed and published in the newspaper. This in conclusion cannot be protected as free speech protected under Article 19 of the Constitution.
14. Section 499 RPC provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said to defame that person. It would be advantageous, for facility of reference, to reproduce Section 499 infra:

“Section 499.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

- (a) *A says— "Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.*
- (b) *A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*
- (c) *A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*
- (d) *A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”

15. It is pertinent to mention here that the allegations made against any person if found to be false it can affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an injury to reputation is a personal injury. Thus, defamation is injurious to reputation. Reputation has been defined in

dictionary as “to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report”. Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. So, it has been held to be an essential component vis-à-vis right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights, 1966, recognizes the right to have opinions and the right of freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is “not only a salt of life but the purest treasure and the most precious perfume of life”. [See: *Smt. Kiran Bedi and Jinder Singh v. The Committee of Inquiry and another*, AIR 1989 SC 714; *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others*, AIR 1983 SC 109; *Nilgiris Bar Association v. TK Mahalingam and another*, AIR 1998 SC 398; *Dr. Mehmood Nayyar Azam v. State of Chattisgarh and others*, AIR 2012 SC 2573; *Vishwanath Sitaram Agrawal v. Sau Sarla Vishwanath Agrawal*, AIR 2012 SC 586; and *Kishore Samrite v. State of U.P. and others*, (2013) 2 SCC 398].

16. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code, to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can

only evaluate material documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceedings against accused and the court cannot look into materials, acceptability of which is essentially a matter for trial.

17. Law does not prohibit entertaining a petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject an application merely on the ground that accused can argue legal and factual issues at the time of framing of the charge. However, inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. (Vide: *Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate and others*, AIR 1998 SC 128; *Ashok Chaturvedi and others v. Shitulh Chanchani and another*, AIR 1998 SC 2796; *G. Sagar Suri and another v. State of U.P. and others*, AIR 2000 SC 754; and *Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy and others*, (2011) 12 SCC 437).

18. 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 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in *Rajiv Thapar v Madan Lal Kapoor*, 2013 (3) SCC 330:

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by

an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

i. 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?

ii. 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.

iii. 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?

iv. 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?"

1. The Supreme Court in *State of Telangana v. Habib Abdullah Jeelani*, reported in **2017 (2) SCC 779**, has held that the powers under Section 482 Cr.PC or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.PC, is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

2. The Supreme Court in the case of *State of Haryana and others v. Bhajan Lal and others*, 1992 Supp (1) SCC 335, has elaborately considered scope and ambit of Section 482 Cr.P.C. and Article 226 of the Constitution of India in the background of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements, the Supreme Court made certain categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102, which gives seven categories of cases where power can be exercised under Section 482 Cr. P.C. are reproduced as follows:

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

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

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

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

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only

a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

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

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

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

3. In another case of *State of Andhra Pradesh v. Golconda Linga Swamy, reported in (2004) 6 SCC 522*, the Supreme Court, while dealing with inherent powers of the High Court under Section 482 Cr. P.C., has observed and held as under:

*“5. 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 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 aliquid aliique concedit, conceditur et 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 exercises 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.

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*7. 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).....*

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8 As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. 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. (See : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1)). 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.”

4. The above settled position of law has also been reiterated by the Supreme Court in *Priti Saraf and another v. State of NCT of Delhi and another*, 2021 SCC Online SC 206, and it has been said that inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint/FIR/ charge-sheet in deciding whether the case is the rarest of

rare cases, to scuttle the prosecution at its inception. It was also held by the Supreme Court that the grounds raised by the accused can be their defence during the course of trial and cannot be taken by the High Court to quash the criminal proceedings. This Court, considering the gravity of the charges and in the light of the law laid down by the Supreme Court, as discussed supra, while exercising jurisdiction under Section 561-A Cr.P.C. (Section 482 Cr.P.C. (Central), cannot decide whether or not the offence has been made out, from the materials collected by the prosecution nor can this Court decide the complicity of present petitioner with the charges framed against him. All these aspects have to be seen only in the trial and not by this Court in exercise of inherent powers under Section 561-A Cr.P.C. Thus, this Court is not inclined to quash the impugned FIR or the order passed by the Special Judge or proceedings initiated by it.

5. For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

(VINOD CHATTERJI KOUL)
JUDGE

Jammu
30.12.2023
BIR

Whether approved for reporting? Yes/No

