

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 14th OF JUNE, 2023

M.CR.C. NO.8403/2016

BETWEEN:-

RAGHAVJI S/O. SHRI LAKHAMSHI, AGED
ABOUT 81 YEARS, R/O. 28 'KALP TARU',
HOSPITAL ROD, VIDISHA (M.P.)

.....PETITIONER

*(BY SHRI SHASHANK SHEKHAR – SENIOR ADVOCATE WITH
SHRI BHUPESH TIWARI - ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION HABIBGANJ,
BHOPAL (M.P.)
2. RAJKUMAR DANGI, S/O. BHUJBAL SINGH
DANGI, AGED ABOUT 32 YEARS, R/O.
VILLAGE TAMOIYA, P.S. KURWAI,
DISTRICT VIDISHA (M.P.)

.....RESPONDENTS

*(RESPONDENT NO.1/STATE BY L.A.S. BAGHEL – GOVERNMENT
ADVOCATE)*

(NONE FOR RESPONDENT NO.2)

.....
Reserved on: 05.04.2023

Pronounced on: 14.06.2023

This petition having been heard and reserved for orders, coming on

for pronouncement this day, the Court pronounced the following:

ORDER

The instant petition is languishing to see its fate since 2016. With the concurrence of learned counsel for the parties, who are ready to argue it finally, the petition is heard finally.

2. This petition is filed under Section 482 of Cr.P.C. for quashing the FIR registered at Police Station Habibganj, District Bhopal vide Crime No.348/2013 on the fulcrum of a complaint made by respondent No.2 against the petitioner for the offence punishable under Sections 377, 506, 34 of the Indian Penal Code.

3. Of a note, the relief of quashing FIR is based on solitary ground that it is malicious and the offence under Section 377 of IPC is not made out at all.

4. Succinctly, the facts of the case are that the petitioner and complainant (respondent No.2) both are resident of Vidisha (M.P.). The petitioner from December 2003 to July 2013 was functioning as State Finance Minister, Government of M.P. Bhopal and was residing in Government Bungalow No.B-19, Char Imli, Bhopal.

One of the employees working in the bungalow of petitioner brought and introduced the complainant with the petitioner in the month of September, 2010. The complainant was homeless and without any shelter in Bhopal and requested the petitioner to allow him to stay in his bungalow and also requested that he may be recommended to get employment somewhere. The benevolent petitioner provided shelter to the complainant by allowing him to inhabitate at his bungalow and also recommended for his employment in a private company and as such the complainant was appointed as an Accountant in Som Distillery

Company. The complainant stayed at the bungalow till 25.05.2013.

The complainant (respondent No.2) after leaving the house of the petitioner made a written complaint to the Station House Officer, Police Station Habibganj on 07.07.2013 alleging that the petitioner has been doing unnatural sex with him in lieu of getting him employed and that was continued from 2010 till May, 2013 when he left the house of the petitioner. Thereafter, the complainant felt humiliated and mustered courage to raise his voice by initiating criminal action against the petitioner and also sought police protection as was apprehensive of danger to his life for fighting against an influential person. It is averred in the complaint that the petitioner threatened him of dire consequences in case he disclosed anything to anybody. Such complaint was supported with an affidavit portraying the incident occurred with him and the manner in which he was exploited by the petitioner. The affidavit further contains that when the complainant left the house of petitioner, the petitioner made a phone-call to him and made him understand not to discuss such things with anybody and whatever decision had to be taken, should be taken after realizing everything patiently. Thereafter, threat was also given by the petitioner to face comeuppance if complainant discloses anything to anybody outside and would also be got expelled from service. The affidavit also contains that the complainant associating with one Ghanshyam Kushwaha, who was also fallen prey to unnatural sex by the petitioner, made a plan to get video-recording done and prepared a CD depicting that the petitioner was doing unnatural sex with complainant and Ghanshyam Kushwaha.

5. The police after lodging the FIR, triggered the investigation in motion; gleaned material; recorded the statements of witnesses and

then filed the charge-sheet on 03.05.2014.

6. Sanguinely, learned senior counsel for the petitioner seeks quashing of FIR mainly on the ground that case of Section 377 of IPC is not made out against the petitioner for the reason that from the contents of FIR and other material collected by the police, it crystallizes that the complainant has lodged the complaint to the police just to defame the petitioner in the society. Shri Shekhar pinpointed towards the FIR and submitted that nowhere it has come that the petitioner has developed the physical relation and committed alleged unnatural sex without the consent and complainant has ever opposed it. The complainant is major and literate person; he stayed at the house of petitioner for almost three years; during that period he has alleged that the petitioner had been doing unnatural sex with him, but neither he made any complaint nor opposed such act, makes it clear that he was a consenting party and just at the instance of political rivals of petitioner, the complainant lodged the report. Shri Shekhaar further submitted that the complainant himself has stated that he has made a plan with another so-called victim Ghanshyam Kushwaha and they got recorded videos and prepared a CD in which it is shown that the petitioner was involved in such an offence and was committing unnatural sex not only with the complainant but also with Ghanshyam Kushwha. It indicates the clear intention of the complainant that he was a consenting party; involved with the petitioner as per his own desire and just to ensnare him, made a plan with Ghanshyam Kushwaha and got the video recording done. However, as per learned senior counsel, although video recording was produced by the complainant, but it is not admissible for want of requisite certificate of Section 65-B of Evidence Act. Shri Shekhar submitted that the

complainant was employed in private company, although he had all the freedom to go in and out of petitioner's bungalow. He submitted that statement of the complainant recorded by the police at different point of time under different provisions of CrPC and also his court statement recorded during the pendency of this petition in the trial, it can be easily gathered that basic intention of complainant was to somehow disparage the image of the petitioner by casting a slur. He further submitted that the complainant has never stated that when the petitioner initially did such act, he ever opposed or objected to it, but conversely his statement and contents of FIR clearly propound that he was a consenting party and thus case under Section 377 of IPC is not made out. To reinforce, learned senior counsel placed reliance on a decision of the Supreme Court *in re Navtej Singh Johar and others v. Union of India* (2018) 10 SCC 1 and submitted that in view of the observations made by the Supreme Court in this case, it is clear that it is a politically-oriented-animosity as in the statement of complainant, he has admitted the fact that his affidavit got prepared by an Advocate of one Ajay Singh @ Rahul Bhaiya who is member of opposite party and that the SHO of Police Station Habibganj had dictated the complaint (Ex.P/1) which was prepared in presence of Superintendent of Police, Bhopal. Shri Shekhar submitted that since the complainant was consenting party and even he had leeway to go in and out of petitioner's house, he did not make any complaint to the police or any authority for three years. He also drew attention of this Court towards the statement of father of complainant recorded by the police under section 161 of CrPC, which is part of charge-sheet, in which father of complainant has stated that complainant's mental condition is not stable and he is in habit of making fallacious allegation against high-up-place persons and earlier also, he

had done so. He submitted that under these circumstance and the material collected by the police, it is clear that the petitioner has been made victim so as to tarnish the resplendence of his admirable political career and holding important post in the State Government. Shri Shekhar also placed on the decisions *in re Dhruvaram Mulidhar Sonar v. State of Maharashtra (2019) 18 SCC 191* and *Ravinder Singh @ Kaku v. State of Punjab (2022) 7 SCC 581*.

7. In contrast, Shri Baghel, learned Government Advocate appearing for the respondent-State submitted that looking to the allegations made by the complainant in his written complaint and also considering the contents of FIR, there is nothing wrong committed by the police while registering the offence under Section 377 of IPC. He submitted that the submissions made on behalf of the petitioner are without any substance and in fact contrary to record. He further submitted that no case in favour of the petitioner is made out on the basis of which FIR can be quashed. He also submitted that the trial has already commenced and some of the witnesses have been recorded and therefore at this stage, it is not proper to interfere in the matter and quash the FIR.

8. Patiently, I have heard the submissions of learned counsel for the rival parties and perused the record with vigilantism.

9. Primarily, this Court is obliged to mull over whether it is a case of consent and offence under Section 377 of IPC is made out against the petitioner or not. Secondly, whether the conduct and statement of complainant are sufficient to reaching a conclusion that instant prosecution is malicious or not.

10. Indisputably, exercising inherent power provided under

Section 482 of CrPC, the High Court would not ordinarily embark upon an enquiry to ascertain whether the evidence in question is reliable or not and inherent jurisdiction has to be exercised sparingly and carefully with caution, but at the same time, Section 482 empowers the High Court to prevent the abuse of process of court. Obviously, the High Court in exercise of its inherent power under Section 482 can quash the proceeding if it comes to a conclusion that such proceeding is frivolous, vexatious or oppressive.

11. Essentially, I feel it apposite here to go-through the legal position already set at rest by the Apex Court. *In re Prashant Bharti v. State (NCT of Delhi) (2013) 9 SCC 293*, the Supreme Court has observed that exercising the power provided under Section 482 of CrPC for quashing the proceeding, the same parameters would be applicable even at the later stage, which are available at the initial stage like before commencement of actual trial, at the stage of issuing process or at the stage of committal. The Supreme Court taking note of the law laid down *in re Rajiv Thapar v. Madan Lal Kapoor (2013) 3 SCC 330*, has observed as under:-

“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor (supra)* wherein this Court *inter alia* held as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the

commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. 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 Cr.P.C.:-

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, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. 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.”

Indeed, the above observations strengthen my view of brushing aside the objection raised by the learned counsel for the State inasmuch as it is a case in which petition has been filed in the year 2016 and in absence of any moratorium, trial commenced and some of the witnesses have been examined, the petition therefore cannot be dismissed on this ground alone, but it is being decided considering the merits of the case.

12. For adjudging the exactitude of complainant’s proclivity, much if not all, lies in the written complaint. Such written complaint made by the complainant on 07.07.2013 is the foundation of lodging the

FIR against the petitioner, which reads as under:-

“प्रति,

श्रीमान् थाना प्रभारी महोदय जी,

हबीबगंज थाना, जिला भोपाल (म.प्र.)

विषय:-मेरे साथ कुकृत्य होने की रिपोर्ट लिखने बाबत।

महोदय जी,

मैं 2010 से जी राघवजी के साथ चार इमली स्थित आवास में रहता था श्री राघवजी मेरे साथ सरकारी नौकरी दिलाने के नाम पर लगातार कुकृत्य करते हरे। मैं इस घटना के बाद काफी बेहद गिलानी महसूस कर रहा हूँ। चूँकि राघवजी म.प्र. सरकार में इस समय मी थे। इस भय मैं इतने साल तक शौषण सहता रहा लेकिन मैंने अब यह तय किया है कि मैं उनके द्वारा किये जा रहे शौषण को नहीं सहूँगा एवं कानूनन उनके खिलाफ कार्यवाही करूँगा चाहे मुझे इसके लिये जो सामाजिक प्रताड़ना सहना पड़े। राघवजी मुझे धमकी देते थे कि यदि तूने किसी को कुछ बताया तो तुझे एवं तेरे परिवार को जान से मरवा दूँगा।

महोदय चूँकि मैं एक बड़े रसूखदारसत्ता में प्रीाव रखने वाले व्यक्ति के खिलाफ रिपोर्ट दर्ज करा रहा हूँ इसलिये मेरे और परिवार को पूर्ण सुरक्षा प्रदान की जाये श्री राघवजी के खिलाफ भारतीय दंड संहिता की धाराओं के तहत प्रकरण दर्ज किया जाये ताकि मैं उनके किये कि सजा दिला सकूँ।

मैं मेरे साथ किये गये दुष्कृत्य की तथा मूल शपथ पत्र प्रस्तुत कर रहा हूँ मैं दिनांक 05/07/13 को थाने आकर सी.डी. और मूल शपथ पत्र प्रस्तुत नहीं कर पाया था वो आज कर रहा हूँ।

दिनांक

07/07/13

धन्यवाद

प्रार्थी

राजकुमार सिंह

ग्राम तमाईया थाना कुरवाई

जि० विदिशा”

Perusal of the complaint justifies that the complainant has nowhere stated that when initially alleged offence of unnatural sex was committed by the petitioner, he opposed such illegitimate act especially when it was relentlessly continued from 2010 to 2013 and there was no restriction upon the complainant to enter into or go out from the petitioner's house. It reveals that after leaving the house of the

petitioner, complainant decided to go against him as he was feeling humiliated. The affidavit made appendage to the written complaint also contained that complainant was residing in the house of the petitioner since 2010 and he was got employed as Accountant in a private firm and when petitioner started objectionable activities with the complainant, he never objected and this was continued till May, 2013. In the affidavit, he has also disclosed this fact that after coming to know about the relationship between the petitioner and complainant, the servants of petitioner namely Sher Singh Chouhan and Suresh Chouhan have also started blackmailing the complainant and they have also developed physical relation with complainant by committing unnatural sex. In the affidavit, it is disclosed that when other persons residing in the bungalow of the petitioner came to know about the relationship of the complainant with others, then it became difficult for the complainant to reside in the petitioner's house and then he left the said house and then only petitioner made a phone call to him and advised him not to discuss such act with anybody and threat was given to him only thereafter. In the affidavit, he has also alleged against Sher Singh Chouhan and Suresh Chouhan. The statement of complainant was also recorded under Section 161 of CrPC, in which also, he has not alleged that when petitioner got him employed in the private company as an Accountant, he had shown any proclivity for developing unnatural sexual relations. Complainant has also not stated that when the petitioner developed physical relation with him, he ever opposed it. Although, he has alleged that not only he, but there were other persons residing in bungalow of petitioner with whom petitioner had developed same relations. In his statement recorded under Section 161 of CrPC, the complainant has stated that associating with one Ghanshyam Kushwaha, he has prepared

one CD containing videos of petitioner committing unnatural sex with them. In the said statement, complainant has also stated that when he was leaving the house of petitioner, he did not object but advised to take sensible decision after considering other aspects. In the whole statement of Section 161, complainant has not uttered a single word that before starting and committing unnatural sex with him, he has ever objected the petitioner or same has been done by the petitioner forcibly without his consent. But on the contrary, in the statement he has disclosed that not only with him but another servant Ghanshyam Kushwaha was also the victim and therefore they both planned to prepare a CD of illegitimate act of the petitioner. The relevant part of statement of Section 161 CrPC showing that it was a plan made by the complainant with another so-called victim Ghanshyam Kushwaha, is reproduced hereinbelow.

“मुझे मेरी ही तरह से पीड़ित राघव जी के बंगले B-19 चार इमली में काम करने वाले नौकर घनश्याम कुशवाह के मिलने से क्योंकि उसके साथ भी इसी तरह का घृणित कार्य राघव जी द्वारा किया जा रहा था हम दोनों ने मिलकर योजना बनाकर मेरे मोबाइल माइक्रो मेक्स X 456 से राघव जी द्वारा हम दोनों के साथ किये जा रहे कुकृत्यों की कई वीडियो फिल्म बनाकर रिकार्डिंग की।”

13. Moreso, the police has filed a document i.e. complaint made by father of the complainant to the Station House Officer, Police Station Habibganj in which he on affidavit has informed the police that the complainant was not in a stable mental condition; is a habitual intoxicant and in the habit of making fallacious allegations against high-up-place persons of the Society. Earlier also he made allegations against some of the persons who are named in the complaint made by the father of complainant. It is also stated that his son is trying to blackmail the petitioner as he is in the wrong hands of leaders of

political rivals of petitioner.

14. Cogitating the overall circumstances and the material gleaned by the prosecution, it reveals that the complainant was in fact interested in belittling the image of petitioner and he has also admitted the fact that affidavit was prepared by him at the instance of an Advocate associated with the leader of rival political party. Further the complaint was dictated by the SHO before the Superintendent of Police, Bhopal. His father has also made allegation against the complainant. Even from the complaint and affidavit it reveals that if such allegation of unnatural sex by the petitioner with the complainant is considered to be true, it does not give any notion about using force or allurements by the petitioner before doing such act. The complainant in the affidavit submitted along with written complaint did not disclose this fact that before getting him employed, the petitioner ever put any precondition of committing unnatural sexual intercourse. Even in the statement recorded in the trial Court, complainant has not disclosed the fact that before getting him employed petitioner had put any condition. The relevant portion is quoted hereinunder:-

“सन 2010 में मैं भोपाल में काम की तलाश में अभियुक्त राघव जी के बंगले पर गया था। वहां पर मेरी अभियुक्त शेर सिंह चौहान से मुलाकात हुई थी। अभियुक्त शेर सिंह ने मेरी मुलाकात राघव जी से करवायी थी और मुझे राघव जी ने साम डिस्ट्रिक्ट के एम.पी. नगर स्थित आफिस में एकाउण्ट के पद पर नौकरी पर रखवाया था। वहां पर मेरी 400 रुपये सैलरी थी। मैं अविवाहित हूँ। मैंने एम.पी. नगर, भोपाल में दो महीने तक मण्डीदीप से आना जाना किया था। अभियुक्त शेर सिंह चौहान के कहने पर नवम्बर 2010 में चार इमली बी-19 सरकारी बंगले में रहने का बोला था और मैं वहां पर रहने लगा था।”

In paragraph 6 of the statement, complainant has stated this fact that-

“मेरे साथ में घनश्याम कुशवाहा और मैंने योजना बनायी”

15. On the face of assertions and demeanour of the complainant, there appears no reason to negate the claim of the petitioner. Thus, I find substance in the submission of learned senior counsel for the petitioner that if the allegations made by the complainant are considered to be true, even then offence under Section 377 of IPC is not made out because it is a case of consent. At this juncture, it is profitable to go-through the legal position, in that, the Supreme Court *in re Navtej Singh Johar* (supra) while dealing with the Constitutional validity of Section 377, has observed as under:-

“**268.17** Ergo, Section 377 IPC, so far as it penalizes any consensual sexual relationship between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) or lesbians (woman and a woman), cannot be regarded as constitutional. However, if anyone, by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of Section 377 is constitutional and it shall remain a penal offence under Section 377 IPC. Any act of the description covered under Section 377 IPC done between two individuals without the consent of any one of them would invite penal liability under Section 377 IPC.”

(emphasis supplied)

613. The choice of a partner, the desire for personal intimacy and the yearning to find love and fulfillment in human relationships have a universal appeal, straddling age and time. In protecting consensual intimacies, the Constitution adopts a simple principle: the state has no business to intrude into these personal matters. Nor can societal notions of heteronormativity regulate constitutional liberties based on sexual orientation.

16. In the light of above enunciated observations, it is clear that both the persons - petitioner and complainant, in the existing circumstances, are considered to be consenting party, therefore, offence

under Section 377 of IPC is not made out. This Court exercising the inherent jurisdiction for securing the ends of justice can quash the prosecution because considering the circumstances if *prima facie* this Court is of the opinion that there are feeble chances of ultimate conviction and no useful purpose is likely to serve by allowing the criminal prosecution to continue, the proceeding can be quashed. The Supreme Court in *re Madhavrao Jiwajirao Scindia and others v. Sambhajirao Chandrojirao Angre and others (1988) 1 SCC 692* considering the scope of exercising power under Section 482 has observed as under:-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

17. Similarly, in a case of **State of Haryana and others v. Bhajan Lal and others 1992 Supp.(1) SCC 335**, the Supreme Court has observed as under:-

“102 (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.

* * * * *

102 (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.”

18. In case of **Inder Mohan Goswami and another v. State of Uttaranchal and others (2007) 12 SCC 1**, the Supreme Court dealing with the inherent power of the High Court provided under Sections 482 of Cr.P.C., has observed as under:-

“Scope and ambit of courts' powers under Section 482 CrPC

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (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.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

* * * * *

28. This Court in *State of Karnataka v. L. Muniswamy* [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large

number of subsequent cases of this Court and other courts.

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31. This Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] observed in para 7 as under : (SCC p. 695)

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

32. In *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised : (SCC pp. 378-79, para 102)

“102. (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 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.”

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46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

19. In a case of **Kapil Agarwal and others v. Sanjay Sharma and others (2021) 5 SCC 524**, the Supreme Court dealt with the power provided under Section 482 of Cr.P.C. to the High Court has observed as under:-

“18. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.PC. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C.”

20. Furthermore, in a case of **Wyeth Limited & Ors. v. State of Bihar & Anr. 2022 LiveLaw (SC) 721**, the Supreme Court has observed as under:-

“14. A careful reading of the complaint, the gist of which we have extracted above would show that none of the ingredients of any of the offences complained against the appellants are made out. Even if all the averments contained in the complaint are taken to be true, they do not make out any of the offences alleged against the appellants. Therefore, we do not know how an FIR was registered and a charge-sheet was also filed.

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18. It is too late in the day to seek support from any precedents, for the proposition that if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed.”

The Supreme Court has also observed that while exercising powers provided under Section 482 of Cr.P.C. it is the duty of the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The guidelines laid down by the Supreme Court in a case of **Bhajan Lal (supra)** and

the categories in which FIR can also be quashed in a petition preferred under Article 226 of the Constitution of India or in exercise of inherent power of the High Court provided under Section 482 of Cr.P.C. It is clear that if High Court comes to a conclusion 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. Further, where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceedings 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, the power can be exercised and FIR can be quashed.

21. In view of the above discourse thereby appreciating the facts & circumstances; gleaned material by the prosecution and also the settled legal position, I am of the opinion that the complaint is sugarcoated with ill-motive, made to belittle the image in society and casting a stigma on the name of high-up-place person, who also holds important portfolio in the State of M.P. Notably, for almost three years, the complainant remained reticent and astoundingly it is only after he left the petitioner's house, he felt humiliated that he made the complaint. Further, I find that the complaint was made after handing-in-gloves with the leaders of rival parties and therefore it is nothing but the assimilation of personal and political antipathies, more precisely, a politically-oriented-animosity, which makes the petitioner's prosecution

malicious. Indeed, the admission of complainant that he planned and prepared CD, itself raises clouds over the demeanour of the complainant and suggests that he was anyhow bent upon to collect material against the petitioner so that at later point of time it can be used against the petitioner. Moreover, the complainant is not specific about threat given by the petitioner but even otherwise threat was given to him, according to complainant, only when he left the house of the petitioner and threat was in the nature that complainant should not discuss anything with anybody outside, otherwise would face dire consequences. The conduct of the complainant as has been described by his father is also a salient feature to observe that the proceeding against the petitioner by the complainant 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. In such circumstances, the prosecution cannot be allowed to continue.

22. As a result, finding no offence under Section 377 of IPC is made out as it is a case of consent and further that the prosecution of petitioner is malicious, therefore, I **allow** the petition. Thus, FIR registered at Police Station Habibganj, District Bhopal vide Crime No.348/2013 on the fulcrum of a complaint made by complainant/respondent No.2 against the petitioner for the offence punishable under Sections 377, 506, 34 of the Indian Penal Code is hereby quashed.

23. Before parting with the case, it needs to be emphasized

that all subsequent proceedings pursuant to said FIR, will automatically come to an end.

24. The petition stands **allowed**.

(SANJAY DWIVEDI)
JUDGE