

VERDICTUM.IN

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 17TH DAY OF AUGUST 2023 / 26TH SRAVANA, 1945

CRL.MC NO. 1966 OF 2023

PETITIONER/ACCUSED:

SAIBY JOSE KIDANGOOR
AGED 51 YEARS, S/O LATE K C KIDANGOOR,
KOORAN KALLOKKARAN HOUSE, 8TH CROSS,
DIVINE NAGAR, SOUTH CHITTOOR - 682 027
ERNAKULAM DISTRICT, PIN - 682027

BY ADVS.
M.R.NANDAKUMAR
BABU S. NAIR
P.MARTIN JOSE

RESPONDENTS/STATE & COMPLAINANT:

- 1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER
CHERANALLOOR POLICE STATION,
ERNAKULAM, PIN - 682031
- 3 BASIL JAMES
AGED 47 YEARS, S/O JAMES JOHN,
MANJUMMEKUDI HOUSE,
KOTTAPADI, KOTHAMANGALAM,
ERNAKULAM DISTRICT, PIN - 686692

SRI. T R RANJITH, SR. PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17.08.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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ORDER

This petition under Section 482 of the Code of Criminal Procedure,1973 ("the Code" for the sake of brevity) is preferred, challenging the proceedings in Crime No.254/2023 of the Cheranalloor Police Station. The aforesaid crime has been registered against the petitioner at the instance of the 3rd respondent under Sections 406, 420, and 506 of the IPC.

2. Facts in brief:

On 3.3.2023, a complaint was lodged at Cheranalloor Police Station by the complainant/3rd respondent against the petitioner, an Advocate with about two decades standing at the Bar. The complainant, in his complaint, alleges that his estranged wife engaged the petitioner as her advocate to represent her in the various disputes between them. These litigations were scattered across various courts, including one at the Judicial Magistrate of First Class in Aluva, while the others were at the Family Court of Ernakulam. It is specifically alleged that the petitioner offered to take a beneficial position in favor of the complainant in return for a payment of Rs.10 lakhs. Additionally, there was a covert threat suggesting that the complainant's passport would be blocked, hindering his overseas employment, if he did not comply. On 15/12/2013, at about 7:30 am, the

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complainant alleges that he went to the residence of the petitioner and handed over a sum of Rs.5 lakhs, and the said transaction was witnessed by the wife of the petitioner. The complainant states that he firmly believed that cases instituted against him by his wife would be withdrawn and the payment made by him would be handed over to his wife. However, only one case – the one pending before the Judicial Magistrate – was withdrawn. He later realized no such payment was made to his wife, and according to him, the petitioner defrauded him. The complainant explained the 10-year lag in lodging the complaint on his fear of retaliation at the hands of the petitioner.

3. Contentions advanced by Sri. Sreekumar, the learned senior counsel appearing for the petitioner as instructed by Sri M.R. Nandakumar, the learned counsel, are as under:

- The complainant and his wife were embroiled in several disputes. They had pending petitions regarding maintenance, gold recovery, and divorce before various courts.
- The complainant was working overseas, and his parents used to attend the courts on his behalf. On 1.8.2013, the petitioner's associate was threatened by the complainant's father while he

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was representing his party before the Court. On 12.9.2013, the same individual verbally abused the petitioner in the Family Court. The junior lawyer approached the police and lodged Annexure-D complaint on 12.9.2013. The complainant's father was warned by the police against repeating such aggressive behavior. Displeased, the father of the complainant filed a complaint against the petitioner with the Kerala Bar Council on 10.10.2013, alleging severe allegations, including professional misconduct. In response, the petitioner submitted Annexure-F explanation on 15.11.2013, countering the allegations levelled in the complaint. Since the petitioner was fed up with the incessant acts of hostility at the Family Court, he finally relinquished his Vakalath, as is evident from Annexure-H.

- In view of the bitter acrimony between the parties and in view of the pendency of proceedings before the Bar Council for alleged professional misconduct, the allegation now levelled that the complainant came to the home of the petitioner and handed over a sum of Rs.5 lakhs is a false, fictitious and untenable story

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concocted with some dubious motive to harass and vex the petitioner.

- The petition filed by the complainant's wife before the learned Magistrate was withdrawn by the wife of the petitioner only on 25.1.2014, much after the petitioner had relinquished the Vakalath.
- The decision of the petitioner to submit his nomination to the post of the President of the Kerala High Court Association irked some of his rivals in the profession, and they spread calumny, which led to the registration of Crime No. 362/2023, for offenses under the Prevention of Corruption Act, 1988, and Section 420 of the IPC. The petitioner alleges that his opponents have manipulated the 3rd respondent in this context and persuaded him to lodge a complainant solely for the purpose of harassing him.

4. Response of the complainant/ party respondent who appeared in person are as under:

- The petitioner is a highly influential person and the complainant

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feared retribution if he came out with the allegations. It was only when news were splashed in the news papers that a crime was registered against the petitioner for demanding and accepting money for getting favorable orders from this Court that he managed to come out in the open and raise his grievances.

- A sum of Rs.5 lakhs was handed over on 15.12.2013, and his driver is aware of this fact.
- He urges that Annexure-R3(d) order passed by the Family Court at Ernakulam disclosed that neither the petitioner nor his junior had appeared before the Family Court, Ernakulam, on 1.8.2013. This would clearly disclose that the allegations levelled against his father were not genuine.
- In respect of the complaint lodged by the father against the petitioner before the Bar Council of Kerala, orders were issued by the Bar Council only on 13.2.2023. This shows the influence of the petitioner
- The investigation is at its initial stages, and this Court will not be

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justified in exercising its extraordinary inherent powers to quash the proceedings.

5. I have heard the submissions and have carefully gone through the records.

6. It is discernible from the records that the central allegation is that on 15.12.2013, the petitioner is alleged to have received a sum of Rs. 5 lakhs from the complainant by inducing him to believe that the petitioner, as the advocate of his wife, would take a favorable stand in his favour and withdraw the cases filed against the complainant. The most striking aspect is that the above allegation saw the light of day only on 3.3.2023, about a decade after the alleged incident. Apart from the long delay, the version is unbelievable for yet another reason. The records produced before this Court discloses that a criminal complaint was lodged on 12.9.2013 against the father of the complainant before the police by the associate of the petitioner, and a crime was registered as Crime No. 1142/2013 of Ernakulam Town North Police Station under Sections 294(b), 506(i) of the IPC and Section 118(d) of the Kerala Police Act, 2011. In the complaint leading to the crime, two incidents which occurred on 1.8.2013 and 12.9.2013 are detailed. The second incident involved the petitioner himself. Immediately thereafter, seeking

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initiation of proceedings for professional misconduct, the father of the complainant approached the Bar Council and filed Annexure-E complaint on 10.10.2013. In the complaint lodged before the Bar Council, the father of the complainant speaks about him being summoned to the police and also the ways in which the petitioner was continuously intimidating him. The petitioner filed his objection before the Bar Council on 15.11.2013, as is evident from Annexure-F. Given the palpable tension and bitter animosity between the parties, it seems implausible that the complainant would visit the petitioner's residence within a month on 15.12.2013, and offer a sum of Rs. 5 lakhs to retract the complaints.

7. Furthermore, when on the one hand, the complainant claims the petitioner assured to take a beneficial position in his favor after receiving the amounts, he also says that he believed the sum of Rs 5 Lakhs would be handed over to his wife. There is no case for the complainant that he had settled his disputes with his wife and he wanted the money to be handed over.

8. The contention of the learned Senior Counsel that the decision of the petitioner to run for the post of the President of the Kerala High Court Association may have ruffled some feathers appears to be entirely plausible. It is the specific contention of the learned Senior counsel that this move led to political adversaries

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in the legal profession spreading rumors, resulting in the registration of another crime against the petitioner. This indicates the possibility of certain individuals having an axe to grind against the petitioner using the complainant as a pawn to ensure that the aspiration of the petitioner to become the President of the Association does not attain fruition. This may be the reason for the complainant venturing to file a complaint after about a decade on 3.3.2023. The records also reveal that the petitioner herein had relinquished his Vakalath during the early part of the year 2014 and it was much later that the petition filed before the learned Magistrate was withdrawn by the wife of the complainant. The complainant cannot plead ignorance to the fact that the petitioner was not representing his wife since 2014. If that be the case, nothing stood in the way of the complainant approaching the police or the court to seek a refund of a sum of Rs 5 lakhs, which by no stretch of imagination can be said to be a merger amount. It is difficult to believe that the complainant did not attempt to move even his little finger to try and get back the amount. The 10-year wait and lack of clarity in the complainant's stance clearly reveal that the objective of the complainant is something else.

9. The question of limitation in filing the complainant almost after a decade of the day on which the petitioner had relinquished his Vakkalath will also

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have to be considered. Admittedly the transaction of handing over the amount was on 15.12.2013. It is evident from Annexure R3 (a) that the petition pending before the learned Magistrate was withdrawn on 25.1.2014. It is undisputed that the petitioner had relinquished his Vakalath even prior to that. The complaint was lodged before the police only on 3.3.2023, and the FIR was registered on the same day. It needs no deliberation that the object of criminal law is to punish perpetrators of crime. This principle has its basis on the maxim "'nullum tempus aut locus occurrit regi', which means that a crime never dies. The policy of law is expressed in the Latin maxim 'vigilantibus et non dormientibus, jura subveniunt', which means that the law assists only those who are vigilant and not those who sleep over their rights. Chapter XXXVI Cr.P.C provides a period of limitation for certain categories of offences. A provision is also made for condonation of delay by providing due justification for the same.

10. The question as to what would be the relevant date for the purpose of computing the period of limitation under Section 468 was answered by the Constitution Bench judgment of the Apex Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases**¹. It was held as follows in paragraph 51 of the judgment.

¹(2014) 2 SCC 62

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51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

11. The observations in Sarah Mathew (supra) were clarified by the Apex Court in **Amritlal v Shantilal Soni and Others**², wherein after dilating on the statutory provisions, the principles were expounded thus:

8. In Sarah Mathew, the Constitution Bench of this Court examined two questions thus:—

3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1.(i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2.(ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A.

² 2022 SCC Online SC 266

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Rajendran, 1990 Supp SCC 121] or Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] (which is followed in Janani Sahoo [Janani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]), lays down the correct law?

9. The Constitution Bench answered the aforesaid questions as follows:—

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] which is followed in Janani Sahoo [Janani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

10. Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of

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limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.

12. It was held that the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. In the case on hand, the complaint having been filed on 3.3.2023 in respect of some transaction that occurred on 15.12.2013. I have no doubt in my mind that the lodging of the complaint is highly belated and clearly barred by limitation.

13. Now, the question is whether, in the above fact scenario, this Court will be justified in bringing to a terminus the criminal proceedings initiated against the petitioner. 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 offenses 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**³. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases.

³ 1992 Supp (1) SCC 335

The illustrative categories indicated by the Apex Court has been detailed in paragraph 102 and 103 of the judgment, which read as under:

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 channelised 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 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

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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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and 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.

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14. The Apex Court had held that in those cases 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, it can be termed to be a fit case for quashing the proceedings. The same is the case 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. Having considered the facts and tested in the light of the directions in **Bhajan Lal** (supra), I am of the view that conditions Nos. 5 and 7 would squarely apply to the facts of the instant case.

15. In **Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra and Others**⁴, a three-Judge bench of the Apex Court after referring to the entire case law on the point, had occasion to again reiterate the principles that should guide this Court while exercising powers under Section 482 of the Code. It was held as under in paragraph 57 of the judgment.

57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following

⁴ [2021 SCC Online SC 315]

principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the

process by Section 482 Cr. P.C.

- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being

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had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

16. In **Mohammad Wajid and Another v. State of U.P. and Ors.**⁵, the Apex Court underscored a principle when an accused seeks to terminate proceedings by raising a contention that the allegations are unduly trivial, vexatious, or motivated by spite. The Hon'ble Court emphasized that the allegations in the First Information Report/complaint are to be meticulously scrutinized to discern whether it possesses the necessary elements of the alleged offense. When proceedings appear frivolous or vexatious, it is the responsibility of the Court to assess additional context from the case records and, when appropriate, discern underlying intentions. It was held that though mere delay in the registration of the FIR may not by itself be a valid reason, when combined with other materials which render the prosecution case improbable and suspicious, it

⁵ 2023 SCC OnLineSC 951

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could serve as a formidable ground to interdict the frivolous prosecution at the threshold stage itself. In **Mohammed Wajid** (supra), there was an over one-year delay in registering the FIR, with no plausible or convincing examination for the delay. Paragraph Nos. 34 and 35 of the judgment read as follows:

34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with 36 all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its

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jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

35. In *State of Andhra Pradesh v. Golconda Linga Swamy*, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

"5. ...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 the 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

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what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

- (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.

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

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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.....” (Emphasis supplied)

17. As regards the delay in lodging FIR it was held as follows in paragraph No. 37 of the above judgment.

37. In the aforesaid context, we may clarify that delay in the registration of the FIR, by itself, cannot be a ground for quashing of the FIR. However, delay with other attending circumstances emerging from the record of the case rendering the entire case put up by the prosecution inherently improbable, may at times become a good ground to quash the FIR and consequential proceedings. If the FIR, like the one in the case on hand, is lodged after a period of more than one year without disclosing the date and time of the alleged incident and further without any plausible and convincing explanation for such delay, then how is the accused expected to defend himself in the trial. It is altogether different to say that in a given case, in the course of investigation the investigating agency may be able to ascertain the date and time of the incident, etc. The recovery of few incriminating articles may also at times lend credence to the allegations levelled in the FIR. However, in the absence of all such materials merely on the basis of vague and general allegations levelled in the FIR, the accused cannot be put to trial.

18. In **Salib alias Shalu alias Salim v. State of U.P. and Ors.**⁶, the Hon’ble Supreme Court reiterated the principles in **Mohammed Wajid** (supra),

⁶ 2023 SCC OnLine 947

and it was held as under in paragraph 28 of the judgment:

28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the

registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

19. In **State of A.P. v. Golconda Linga Swamy**,⁷ the Apex Court had lucidly explained the circumstances under which this Court will be justified in invoking powers under Section 482 of the Code. It was held as follows in paragraph 8 of the judgment.

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 *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 and *Raghubir Saran (Dr.) v. State of Bihar* [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

⁷(2004) 6 SCC 522

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 a 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 cognisance 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/FIR 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 FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR 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 themselves be the basis for quashing the proceeding.

20. The 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. The authority of the court exists for the advancement of justice, and if any attempt is made to abuse that authority so as

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to produce injustice, the court has the power to prevent such abuse. In the exercise of powers under Section 482 of the Code, this Court will be justified in quashing any proceeding if it finds that initiation or continuance of the proceedings amounts to abuse of the process of the court. Having considered the facts of the instant case in the light of the principles laid above, I have no doubt in my mind that the allegations are vexatious and frivolous and made only to spite the petitioner. In that view of the matter, I hold that the continuance of the criminal proceedings against the petitioner would result in an abuse of process.

In view of the discussion above, I am of the considered opinion that the petitioner is entitled to succeed in this petition. This petition will stand. Crime No.254/2023 of the Cheranalloor Police Station and all further proceedings pursuant thereto against the petitioner are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN. V,
JUDGE**

@S/16/8/2023

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APPENDIX OF CRL.MC 1966/2023

PETITIONER ANNEXURES

- Annexure A A TYPED COPY OF THE COMPLAINT DATED 03.03.2023
SUBMITTED BY THE 3RD RESPONDENT
- Annexure B A TRUE COPY OF THE FIR IN CRIME NO. 254/2023 OF
CHERANALLOOR POLICE STATION DATED 03.03.2023
- Annexure C A TRUE COPY OF THE COMPLAINT FILED BY ADV. JOSEPH
TIJO DATED 12.09.2013 BEFORE THE ASST.
COMMISSIONER OF POLICE
- Annexure D A TRUE COPY OF THE ACKNOWLEDGEMENT CARD ISSUED
FROM THE OFFICE OF THE ASST. COMMISSIONER OF
POLICE, ERNAKULAM CENTRAL SUBDIVISION
- Annexure E A TRUE COPY OF THE COMPLAINT FILED BY MR. JAMES
AGAINST THE PETITIONER DATED 10.10.2013 BEFORE THE
BAR COUNCIL OF KERALA
- Annexure F A TRUE COPY OF THE EXPLANATION SUBMITTED BY THE
PETITIONER BEFORE THE BAR COUNCIL OF KERALA
- Annexure G THE TRUE COPY OF THE ORDER DATED 13.02.2023 OF THE
BAR COUNCIL OF KERALA
- Annexure H A TRUE COPY OF THE LETTER DULY SIGNED AND ISSUED
BY ANNA MARY DANIEL FOR RECEIVING BACK THE FILE
- Annexure I A TRUE COPY OF FIR IN CRIME NO. 362/2023 OF
ERNAKULAM CENTRAL POLICE STATION DATED 01.02.2023
- Annexure J TRUE COPY OF THE ORDER OF THIS HON'BLE COURT DATED
14.02.2023 IN WPC (CRIMINAL) 110/2023
- Annexure K A TRUE COPY OF THE ORDER DATED 02.03.2023 PASSED
BY THE HON'BLE COURT IN WP (CRIMINAL) 110/2023

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Annexure A(L) THE CERTIFIED COPY OF THE RELINQUISHMENT LETTER DATED 14.12.2013 IN MC NO. 18/2012 OF THE JFCM-1, ALUVA

Annexure A(M) THE CERTIFIED COPY OF THE PETITION PETITION TO WITHDRAW THE M.C.NO. 18/2012 OF THE JFCM I ALUVA DATED 25.01.2014

RESPONDENT ANNEXURES

Annexure R3 (A) Copy of order dated: 25-01-2014 in MC No 18/2012 on the file of Judicial I st class magistrate court - I , Aluva

Annexure R3 (B) Copy of Vakalath of the petitioner for Anna Mary Dainel on the file of Judicial Ist class Magistrate court-1 Aluva

Annexure R3 (C) Copy of the complaint dated : 12-9-2013 of Advocate Joseph Tijo to the Asst. Commissioner

Annexure R3 (D) Copy of order dt: 1-08-2013 in IA No: 2597 12012 in O/P No: 52/2013 on the file of Family Court, Ernakulam

Annexure R3 (E) Copy of order dated 08-12-2016 on the file of ADDL Chief Judicial Magistrate Ernakulam

Annexure R3 (F) Copy of order No.KBC/CP107/2013/399/2023 from the Bar Council of Kerala on 13-02.2023 intimating the decision held on 04-01-2015 Bar Council of Kerala Meeting.

Annexure R3 (G) Copy of Appeal and acknowledgement on the Bar Council of India dated 12-03-2023