IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CRIMINAL PETITION No.1866 OF 2024

% Delivered on: 24-06-2024

Between:

Mr. Vedula Venkataramana . . Petitioner

Vs.

$ The State of Telangana, rep.by its
Sub-Inspector of Police, CCS, DD,
Hyderabad & 2 others .. Respondents

! For Petitioner : Mr. V. Pattabhi,
Learned Senior Counsel

^ For Respondent Nos.1 & 2 : Mr. Palle Nageshwar Rao
Learned Public Prosecutor

^ For Respondent No.3 : Mr. Nimma Narayana

< Gist :

> Head Note :

? Cases Referred :

1. (2014) 2 SCC 1
2. (2021) 19 SCC 401
3. 1933 Cri LJ 1255
4. (1973) 1 AP LJ 200
5. 1952 Cri LJ 747
6. AIR 2021 SC 1918
7. (2017) 2 SCC 779
8. (2009) 4 SCC 437
9. (2014) 4 SCC 453
10. (2021) 19 SCC 458
11. (1994) 4 SCC 260
12. (2020) 4 SCC 727

THE HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION NO. 1866 OF 2024

The present criminal petition is filed under Section 482 CrPC seeking to quash FIR No. 26/2024 dt. 25.01.2024 registered by P.S. Central Crime Station.

2. Heard Mr. V. Pattabhi, learned senior counsel appearing for Ms. B. Vanaja, learned counsel for the Petitioner, Mr. PalleNageshwar Rao, learned Public Prosecutor appearing for Respondent Nos.1 and 2 and Mr. Nimma Narayana, learned counsel for Respondent No. 3.

Factual Background

3. Respondent No. 3 herein is the complainant. He lodged a complaint dt. 16.12.2023 against the Petitioner herein and another accused before P.S. IS Sadan. The following was allegedin the complaint dt. 16.12.2023:

i. Respondent No. 3 belongs to a Scheduled Caste. In 1982, his father and other members of his community purchased lands in Bowrampet village, Mechal-Malkajgiri District. The entire sale consideration was paid and physical possession was handed over.

ii. Respondent No. 3 and his community members were in possession of the subject lands. However, in 2005, third parties

started encroaching on the subject land. They filed civil suits and initiated revenue proceedings in relation to the lands owned by Respondent No. 3 and his community members.

iii. Respondent No. 3 and his community members decided to engage the Petitioner herein as their counsel, given his efficiency, eminence and popularity. Accordingly, the relevant documents were handed over to the Petitioner in 2005.

iv. Respondent No. 3 alleges that the Petitioner assured him that he has a good case and they shall win the case. A fee of Rs. 30,00,000/- was demanded by the Petitioner. Respondent No. 3 claims that the demanded fee of Rs. 30,00,000/- was paid.

v. It is alleged that, after receiving the fee, the Petitioner did not pursue the case of Respondent No. 3. There was no progress in the pending cases. Thereafter, Respondent No. 3 and his community members visited the office of the Petitioner wherein he assured that they will win the case. However, no steps were taken by the Petitioner to pursue the cases.

vi. Respondent No. 3 and his community members again visited the Petitioner's office. ***The Petitioner stated that he can manage the High Court judges and get a judgment in favour of Respondent***

No. 3. He also stated that in other cases too, he had paid money to the judges and got favourable orders.

vii. ***The Petitioner demanded Rs. 10,00,00,000/- (Rupees ten crores) in cash to pay the judges of the High Court. Respondent No. 3 and his community members requested the Petitioner to accept Rs. 7,00,00,000/- As the Petitioner agreed, Respondent No. 3 paid Rs. 7,00,00,000/- (Rupees seven crore) in cash to the Petitioner.***

viii. ***Thereafter, Respondent No. 3 got to know from reliable sources that the Petitioner herein colluded with the opposite side and obtained Rs. 25,00,00,000/- (Rupees twenty-five crores) in cash. After receiving the said amount, the Petitioner failed to appear on behalf of Respondent No. 3.***

ix. ***Respondent No. 3 alleges in the complaint that, despite receiving Rs. 7,00,00,000/- in cash, the Petitioner failed to appear in his case. Further, he cheated Respondent No. 3 by inducing him to pay Rs. 7,00,00,000/- by representing that the said amount will be paid to the judges of the High Court.***

x. ***Respondent No. 3 also named the judges of the High Court, whose names the Petitioner had taken to obtain money.***

xi. Respondent No. 3 and his community members approached the Petitioner and demanded the money back. They informed the Petitioner that they seek to appoint a new advocate. ***However, instead of returning the money, the Petitioner hurled caste-based abuses against Respondent No. 3***.

xii. Respondent No. 3 informed the Petitioner that he will lodge a complaint. Hearing the same, the Petitioner requested Respondent No. 3 for a month's time to return Rs. 7,00,00,000/-

xiii. ***The Petitioner returned Rs. 1,00,00,000/- But failed to return the remaining Rs. 6,00,00,000/-***

xiv. ***When the remaining Rs. 6,00,00,000/- were demanded by Respondent No. 3, the Petitioner threatened to get him and his minor children abducted and killed.***

xv. ***The Petitioner with the help of Accused No. 2 – Mr. Ahmed Bin Abdulla Balala, who is an MLA of the Malakpet constituency, has been harassing and threatening Respondent No. 3 with his life.***

4. Based on the above complaint, P.S. IS Sadan registered a case – Cr. No. 278/2023 under Ss. 406, 420, 504 and 506 of the Indian Penal Code, 1860 and Ss. 3(2)(va) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 [hereinafter 'the SC & ST Act, 1989']. The case was transferred to P.S. Central Crime Station and was renumbered as FIR No. 26/2024.

5. Contentions of the Petitioner:

i. The allegations are false, mala fide and baseless. The complaint is vague. No specific dates were given by Respondent No. 3 as to the payment of Rs. 7,00,00,000/-

ii. There is no proof of payment of Rs. 7,00,00,000/-

iii. The concerned police authorities ought to have conducted a preliminary inquiry before registering the FIR. Reliance was placed on **Lalita Kumari v. Govt. of U.P.**[1]

iv. The alleged offence pertains to an undated incident of 2005. The complaint is lodged after 19 years.

v. The case is of civil nature. The complainant/Respondent No. 3 seeks to recover Rs. 6,00,00,000/- allegedly paid by him.

6. Contentions of Respondent Nos. 1 and 2

i. There are specific allegations which are serious in nature.

ii. As the investigation is pending, the present criminal petition is liable to be dismissed.

[1](2014) 2 SCC 1.

7. Contentions of Respondent No. 3/complainant herein

i. There are specific allegations against the Petitioner.

ii. The Petitioner obtained money from Respondent No. 3 by misrepresenting that the money is required to bribe the judges of the High Court. The Petitioner induced the Respondent to pay Rs. 7,00,00,000/- on the pretext of paying the judges to obtain a favourable judgment.

iii. Further, when the money was demanded to be paid back, the Petitioner threatened to abduct Respondent No. 3 and his children and get them killed.

iv. The Petitioner also abused Respondent No. 3 in the name of his caste.

v. As the investigation is pending, the FIR ought not to be quashed. Reliance was placed on Neeharika Infrastructure (P) Ltd. v. State of Maharashtra[2].

vi. The alleged offences against the Petitioner are cognizable in nature. Therefore, neither the arrest nor the investigation can be stayed.

vii. Respondent No. 3 participated in the investigation and provided the details of the cases in which the Petitioner was engaged.

viii. The genuiness of the allegations in the FIR can only be determined after the completion of the investigation.

[2](2021) 19 SCC 401.

ix. Conducting preliminary inquiry as stated in Lalita Kumari (supra) is not applicable to offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Reliance is placed on Section 18A of the said Act.

8. <u>Findings:-</u>

i. The thrust of the case against the Petitioner is that he induced Respondent No. 3 to pay Rs. 7,00,00,000/- stating that the same will be paid to the judges of this Court and in exchange a favourable judgment will be delivered. As no favourable judgment was delivered and the amount was not returned, Respondent No. 3 lodged the complaint.

ii. It is pertinent to note that, as per the complaint, when the Petitioner made the alleged representation to bribe the judges, Respondent No.3 agreed and paid Rs. 7,00,00,000/- This raises a question whether a complainant who is a party to an illegal agreement can maintain an action under the criminal law for non-performance of such an agreement and allege cheating.

iii. The above question was considered in **Yacoob v. Emperor**[3], wherein similar allegations were made by the complainant therein. The Court

[3] 1933 Cri LJ 1255.

therein held that criminal proceedings are maintainable, even if the complainant was party to an illegal agreement. The relevant paragraph is extracted below:

> **4. The learned advocate for the applicant contends that, as a matter of law, the money having been paid for an illegal purpose, namely that of bribing a Magistrate, a prosecution for cheating in regard to the money should not be maintained in a Court of law. The ground upon which this argument is based is that the contract being for an illegal purpose is not enforceable at law, and therefore should not form the basis of a prosecution. I am unable to accede to this contention.** There is no authority in support of this proposition except that pointed out by the learned advocate for the applicant, namely: *Emperor* v. *Jani Hira* [(1912) 13 Cr LJ 521 : 15 IC 793.] , which in my view does not purport to lay down a general principle applicable to such facts and circumstances as are set out in the case before me. As regards the sentence I view this offence as a very grave one because it is extremely dangerous to the position of a Judicial Officer to have false representations affecting his integrity and reputation, made to litigants. To deal with the culprit in a case like this leniently will be to belittle the importance of the reputation of Judicial Officers, to themselves and to the public and in view of the previous convictions I do not consider that the sentence is unduly severe. The application is dismissed.

iv. Likewise, the erstwhile Andhra Pradesh High Court in **Nagi Reddy v. State**[4] held that criminal proceedings alleging cheating are

[4]1973) 1 AP LJ 200.

maintainable, even if the amount was paid for an illegal purpose. The relevant paragraph is extracted below:

9. The fact that monies were parted with on an agreement which is illegal because it offends principles of public policy, is not relevant for the purpose of finding out whether an offence attracting a penalty prescribed has been made out or not. It may be that to avoid the offence of cheating the culprits may have to necessarily commit offences such as counterfeiting currency notes or paying a bribe as promised etc. But that factor cannot weigh in determining whether an offence on the facts stated now has been made out or not. It may be that in avoiding the prosecution for cheating, the accused may have to commit other offences and in case they commit other offences, they will have to face the prosecution for the same. It is for the court to consider *De Hors* those considerations whether on the facts stated, the offence alleged has been made out. As pointed out by Rnjamannar, C.J., (as he then was) in *Public Prosecutor* v. *Bhimeswararao* [AIR 1948 Mad 258.] it is improper to import considerations of public policy or the question of enforcibility of a contract in a civil court for the adjudication of criminal liability. In the present case, the accused had made a false representation as stated in the charge sheet that they would pay back counterfeit currency notes four times the value of the genuine currency notes paid to them, and had made the complainant part with money and in the end bad given a box containing not even the counterfeit currency notes, but stones and waste papers. The facts stated make out a case under Section 420 I.P.C. and the Magistrate was therefore right in framing a charge under that Section against the accused.

v. In **Rama Shankar Shukla v. Rikhab Kumar Jain**[5], the Allahabad High Court dealt with a case wherein the accused, who was a lawyer, allegedly obtained the money from the complainant to influence the Income Tax Officer. The accused contended that as the money was parted for an illegal purpose, no criminal proceedings can be maintained. The Court therein rejected the said contention and held as follows:

> 6. It is not possible to lay down as a general proposition of law that in each and every case where cheating is based upon a void and illegal I agreement there can be no criminal prosecution for cheating……..

vi. Therefore, though Respondent No. 3 agreed to pay Rs. 7,00,00,000/- to the Petitioner for an illegal purpose i.e., to bribe the judges of the High Court, a criminal complaint, at his instance, against the Petitioner is maintainable.

vii. Before delving into the facts of the case, it is apposite to discuss the law pertaining to quashing an FIR under Section 482 CrPC. The law relating to the scope and exercise of power under Section 482 CrPC was explained by the Supreme Court in **M/s. Neeharika**

[5]1952 Cri LJ 747.

Infrastructure Private Limited v. State of Maharashtra[6] as follows:

"….

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;

[6] AIR 2021 SC 1918

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 encyclopedia 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 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."

viii. It is clear from the above decision thatthe power under Section 482 CrPC has to be exercised sparingly. At the stage of investigation, the proceedingscannot be scuttled and the authorities have to be given an opportunity to unearth the truth.

ix. While dealing with an FIR, courts should be mindful that the same is not an encyclopedia. It is to find proof in support of the allegations in an FIR, that an investigation is undertaken. The correctness of such allegations is to be considered at the relevant stage, which in most cases, is not the stage of investigation.

x. Now coming to the facts of the case, the allegation regarding the payment of Rs.7,00,00,000/- by Respondent No. 3 seems exaggerated and its plausibility is doubtful. While it is true that Respondent No. 3 gave no information about how he obtained Rs. 7,00,00,000/- and when it was paid to the Petitioner, the allegations still are worthy of investigation.

xi. The allegations levelled against the Petitioner are grave. The allegation that money was obtained to bribe the judges of this Court casts a serious doubt on the independence of judiciary and implies that justice is up for sale. Such serious allegations need to be investigated.

xii. Further, in their counter affidavits, Respondents Nos. 1 and 2 have stated that the investigation is pending and information in relation to the allegations is sought from the Petitioner as well as Respondent No. 3.

xiii. This Court does not deem it appropriate to scuttle the investigation by exercising its power under Section 482 CrPC. Be that as it may, this Court deems it fit to grant protection to the Petitioner from arrest.

xiv. This Court is aware that the Supreme Court deprecates the practice of granting an order of 'not to arrest' while dismissing the petition seeking to quash an FIR. In **State of Telangana v. Habib Abdullah Jeelani**[7], the Supreme Court held that, while dismissing an application to quash the FIR, an order directing the authorities not to arrest the accused is impermissible. The reason given by the Court was that such an order amounts to an order of anticipatory bail under Section 438 CrPC. The relevant paragraph is extracted below:

[7](2017) 2 SCC 779.

16. In the instant case, the High Court has not referred to allegations made in the FIR or what has come out in the investigation. It has noted and correctly that the investigation is in progress and it is not appropriate to stay the investigation of the case. **It has disposed of the application under Section 482 CrPC and while doing that it has directed that the investigating agency shall not arrest the accused persons. This direction "amounts" to an order under Section 438 CrPC, albeit without satisfaction of the conditions of the said provision. This is legally unacceptable.**

xv. The Court in **Habib Abdullah Jeelani** (supra) held that the existence of an alternative remedy against arrest in the form of anticipatory bail under Section 438 CrPC acts as a bar for the High Courts to grant an order of 'not to arrest' while dismissing the application seeking to quash an FIR. However, relying on **Lal Kamlendra Pratap Singh v. State of U.P.**[8] and **Hema Mishra v. State of U.P.**[9], the Court held that where the remedy of Section 438 CrPC is not available and the arrest of the accused is not necessary, the High Courts can protect the accused from arrest exercising their power either under Section 482 CrPC or Article 226. The relevant paragraph is extracted below:

23. We have referred to the authority in *Hema Mishra* [*Hema Mishra* v. *State of U.P.*, (2014) 4 SCC 453 : (2014) 2 SCC (Cri) 363] as that specifically deals with the case that came from the State of Uttar Pradesh where Section 438 CrPC has been deleted. It has

[8](2009) 4 SCC 437.
[9](2014) 4 SCC 453.

concurred with the view expressed in *Lal Kamlendra Pratap Singh* [*Lal Kamlendra Pratap Singh* v. *State of U.P.*, (2009) 4 SCC 437 : (2009) 2 SCC (Cri) 330] . The said decision, needless to say, has to be read in the context of the State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case. What needs to be stated here is that the States where Section 438 CrPC has not been deleted and kept on the statute book, the High Court should be well advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, it exercises judicial restraint. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the Court to keep such unprincipled and unethical litigants at bay.

xvi. Reiterating the observations in **Habib Abdullah Jeelani** (supra), the Supreme Court in **Ravuri Krishna Murthy v. State of Telangana**[10], held as follows:

[10](2021) 19 SCC 458.

9. The High Court was justified in declining to exercise its jurisdiction under Section 482 and, therefore, rejected the application for quashing the proceedings. Equally, there was no basis or justification for directing that the third respondent should not be arrested and that the investigating officer must complete the investigation and file a final report under Section 173 of the Code of Criminal Procedure without arresting the third respondent. Such a direction by the High Court has the effect of impeding the course of the investigation and has no basis or justification in law. The petition under Section 482 was for quashing the FIR. The High Court found no substance in the petition. The matter should have ended there. The order restraining arrest was not in aid of further proceedings. Indeed, the proceedings were at an end once the High Court declined to quash the FIR. **A person in the position of the third respondent has remedies available under the Code of Criminal Procedure to protect his liberty by either seeking anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 or applying for regular bail under Section 439.** A blanket direction of the nature which has been issued by the High Court would completely dislocate the investigation and cause a serious obstruction in the enforcement of criminal justice. Such an order ought not to have been passed by the High Court. What compounds matters is that there is not a word in justification in the order of the High Court for issuing such a direction. The High Court has been oblivious to the serious nature of the allegations, involving the tampering of a judicial record. We disapprove of the course followed by the High Court. It has no foundation in law.

xvii. The law in **Habib Abdullah Jeelani**(supra) and **Ravuri Krishna Murthy**(supra) was reiterated in **Neeharika Infrastructure Private Limited**(supra). The relevant paragraphs are extracted below:

> 26. We are at pains to note that despite the law laid down by this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] , deprecating such orders passed by the High Courts of *not to arrest* during the pendency of the investigation, even when the quashing petitions under Section 482CrPC or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.
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> 27. In the recent decision of this Court in *Ravuri Krishna Murthy* [*Ravuri Krishna Murthy* v. *State of Telangana*, (2021) 19 SCC 458] , this Bench set aside the similar order [*Maloth Tarachand* v. *State of Telangana*, 2016 SCC OnLineHyd 808] passed by the Andhra Pradesh High Court of granting a blanket order of protection from arrest, even after coming to the conclusion that no case for quashing was established. The High Court while disposing of the quashing petition and while refusing to quash the criminal proceedings in exercise of powers under Section 482CrPC directed to complete the investigation into the crime without arresting the second petitioner A-2 and file a final report, if any, in accordance with law. The High Court also further passed an order that the second petitioner A-2 to appear before the investigating agency as and when required

and cooperate with the investigating agency. After considering the decision of this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] , this Court set aside the order [*Maloth Tarachand* v. *State of Telangana*, 2016 SCC OnLineHyd 808] passed by the High Court restraining the investigating officer from arresting the second accused.

28. Thus, it has been found that despite absolute proposition of law laid down by this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] that such a blanket order of *not to arrest* till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482CrPC, as observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] and we direct all the High Courts to scrupulously follow the law laid down by this Court in *Habib Abdullah Jeelani* [*State of Telangana* v. *Habib Abdullah Jeelani*, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142] and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of *not to arrest or "no coercive steps to be taken"* till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482CrPC and/or Article 226 of the Constitution of India.

xviii. At this juncture, it is apposite to discuss the decision of the Supreme Court in **Hema Mishra** (supra). In the said case, the Court dealt with the law in the state of Uttar Pradesh where Section 438 CrPC was removed *vide* a State Amendment. The Court held that, though Section 438 CrPC was omitted in Uttar Pradesh, protection from arrest can be granted in appropriate cases exercising power under Article 226. The relevant paragraphs are extracted below:

> **21. I may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All the same, the High Court has got the power and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pinpoint what are the appropriate cases, which have to be left to the wisdom of the Court exercising powers under Article 226 of the Constitution of India.**
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> 27. It is for this reason, we are of the opinion that in appropriate cases the High Court is empowered to entertain the petition under Article 226 of the Constitution of India where the main relief itself is against arrest. **Obviously, when provisions of Section 438 CrPC are not available to the accused persons in the State of Uttar Pradesh,**

under the normal circumstances such accused persons would not be entitled to claim such a relief under Article 226 of the Constitution. It cannot be converted into a second window for the relief which is consciously denied statutorily making it a case of casus omissus. At the same time, as rightly observed in para 21 extracted above, the High Court cannot be completely denuded of its powers under Article 226 of the Constitution, to grant such a relief in appropriate and deserving cases; albeit this power is to be exercised with extreme caution and sparingly in those cases where arrest of a person would lead to total miscarriage of justice. There may be cases where pre-arrest may be entirely unwarranted and lead to disastrous consequences. Whenever the High Court is convinced of such a situation, it would be appropriate to grant the relief against pre-arrest in such cases. What would be those cases will have to be left to the wisdom of the High Court. What is emphasised is that the High Court is not bereft of its powers to grant this relief under Article 226 of the Constitution.

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36. Thus, such a power has to be exercised very cautiously keeping in view, at the same time, that the provisions of Article 226 are a device to advance justice and not to frustrate it. The powers are, therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. In entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 CrPC proceedings, keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as back

door entry via Article 226. **On the other hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its power under Article 226 of the Constitution. It is again clarified that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.**

xix. The decisions in **Habib Abdullah Jeelani** (supra) and **Ravuri Krishna Murthy** (supra) hold that an order of 'not to arrest' cannot be passed while dismissing an application under Section 482 CrPC. However, the said judgments were passed noting the existence of Section 438 CrPC in the statue book. However, where the remedy under Section 438 CrPC is not available, this Court in exercise of its inherent power under Section 482 CrPC can grant protection from arrest. The said view was expressed in **Hema Mishra** (supra).

xx. In the present case, along with the offences under the Indian Penal Code, offences under the SC&ST Act, 1989 were alleged against the Petitioner.Sections 18 and 18A of the SC & ST Act, 1989 bar the applicability of Section 438 CrPC. The said provisions are extracted below:

18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall

apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

18A. No enquiry or approval required.—(1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.

xxi. As the offences under SC & ST Act, 1989 were alleged against the Petitioner, he has no remedy under Section 438 CrPC. Therefore, this Court in exercise of its power under Section 482 CrPC deems it fit to protect the Petitioner from arrest.

xxii. It is pertinent to note that the Supreme Court in **Joginder Kumar v. State of U.P.**[11] held that not in all cases, an arrest is warranted. Arrest brings ignominy and has the tendency to ruin a person's reputation forever.Therefore, an arrest is permissible only when it is extremely necessary. The relevant paragraphs in **Joginder Kumar** (supra) are extracted below:

[11](1994) 4 SCC 260.

20. In India, *Third Report of the National Police Commission* at p. 32 also suggested:

"An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(*i*) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(*ii*) The accused is likely to abscond and evade the processes of law.

(*iii*) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(*iv*) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines …."

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a

police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

xxiii. It is important to note that there may be caseswhere, looking at the allegations in the FIR, a view in relation to its*prima facie* veracity cannot be taken. Such cases require investigation. However, merely because investigation is pending, a person cannot be subjected to the threat of arrest. Therefore, a remedy of anticipatory bail was incorporated under Section 438 CrPC. In cases where the remedy under Section 438 CrPC is not available and where the allegations require to be investigated and where custodial interrogation is not

required, this Court has the power to protect an accused from arrest under Section 482 CrPC.

xxiv. As stated above, certain claims made by Respondent No. 3 are highly exaggerated. The conduct of Respondent No. 3 in participationof the illegal act alleged against the Petitioner raises suspicions about his *bona fides*. Further, nothing in the counter-affidavit indicates that Petitioner's custodial interrogations is required. This Court is also mindful of the fact that the Petitioner is a senior advocate with long standing.

xxv. Before parting, this Court would like to clarify that the grant of protection from arrest is not in contravention of Sections 18 and 18A of the SC & ST Act, 1989. In **Prathvi Raj Chauhan v. Union of India**[12], Supreme Court while upholding the *vires* of Section 18A held that protection from arrest under the SC & ST Act, 1989 can be granted in appropriate cases while exercising the power under Section 482 CrPC. The relevant paragraphs are extracted below:

> 11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(*i*)

[12](2020) 4 SCC 727.

> shall not apply. We have clarified this aspect while deciding the review petitions.
>
> 12. The Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

9. Vide order dated 07.03.2024, this Court directed the Investigating Officer in the Subject crime to conduct investigation on the following aspects:-

i. Pendency of cases in different courts including this Court where 3rd respondent is an party,

ii. Appearance of the petitioner on behalf of 3rd respondent in the said cases including filing of vakalath, written statement, plaint, petitions, counters etc.

iii. Paying capacity of 3rd respondent,

iv. Borrowing of such huge amount of 7 Crores from the friends of 3rd respondent as contended by him.

v. Proceedings issued by Government of India to the effect that any transaction over and above Rs.2 lakhs should not be in cash and it should be only on online or cheque,

10. This court also directed Deputy Commissioner of Police, CCS Hyderabad, to supervise the investigation and file counter. Counter was filed

stating that the Investigating Officer has recorded statements of 15 witnesses wherein they have stated that they have paid an amount of Rs.2 laksh each to the 3rd respondent on the promise/assurance that he will execute sale deeds in respect of 90 to 150 sq.yards of the subject property on clearance of the dispute in the court. They have paid the said amount through mediator.

11. In light of the aforesaid discussion, the present criminal petition is disposed with the following directions:-

i. As the investigation is pending, FIR No. 26/2024 dt. 25.01.2024 cannot be quashed;

ii. The Petitioner is protected from arrest till filing of final report;

iii. The Petitioner shall co-operate in the investigation as and when required;

iv. Needless to say, if the Petitioner fails to co-operate in the investigation, the authorities are at liberty to take appropriate steps in accordance with law.

v. The Investigating officer shall conduct investigation in the subject crime strictly in accordance with law including on the aspects mentioned supra.

As a sequel, miscellaneous petitions, if any pending, shall stands closed.

K. LAKSHMAN, J

Date:24.06.2024
Note: L.R.copy to be marked. b/o. vvr