

(2023) 03 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : CR.MMO No. 121 Of 2023

Bhikhu Ram

APPELLANT

Vs

State Of H.P. And Another

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 406, 420, 441, 447
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 438, 457, 482
Himachal Pradesh Tenancy And Land Reforms Act, 1972 — Section 104(3)

Citation : (2023) 03 SHI CK 0066

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Dr. Rajesh Kumar Parmar, Y.P.S. Dhaulta, Rupinder Singh Thakur, Sumit Sharma, Ajay Kochhar, Vivek Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. The petitioner-Bhikhu Ram seeks quashing of FIR No.90/2020, dated 20.07.2020, registered against him under Sections 406 and 447 of the Indian Penal Code (IPC) at Police Station Jhandutta, District Bilaspur, H.P. Further prayer is for setting aside the consequential proceedings arising therefrom.

2. Heard learned counsel for the petitioner, learned Senior Counsel for respondent No.2 and learned Additional Advocate General for respondent No.1-State.

3. Facts:-

The FIR in question was registered on the complaint of respondent No.2 presented on 20.07.2020. The complaint pertained to an incident alleged to have taken place on 16.02.2020. The complainant alleged that:-

3(i). The petitioner approached him on 16.02.2020 with the request to permit him (petitioner) to fell down a eucalyptus tree that was standing over complainant's land in Village Sundru, comprised in Khasra Nos.1/117 and 2/117, measuring 5 bigha 18 biswa. The petitioner projected that the said eucalyptus tree could fall and damage his house. The complainant acceded to petitioner's request, whereafter, the petitioner felled the eucalyptus tree the same day, i.e. on 16.02.2020.

3(ii). The tree so felled was lying on complainant's land. The petitioner did not allow the complainant to lift the wood of eucalyptus tree and rather, asserted his ownership right over it. Complainant's son-Rakesh Kumar was serving out of State at the time. On returning home, his son also tried to lift the wood, but the petitioner did not allow him to do so and claimed his ownership over the same.

The complainant's grievance was that petitioner's intentions had become dishonest after seeing the eucalyptus wood and with such dishonest intention, he did not allow the complainant to collect the wood of the eucalyptus tree.

4. Learned counsel on both sides have taken me to the record and made extensive submissions. However, on perusal of the record including the police report presented by the respondent under Section 173 of the Code of Criminal Procedure (Cr.PC), it is not decipherable as to how in the projected facts, the petitioner can be said to have committed the offences of criminal trespass and criminal breach of trust under Sections 406 and 447 IPC, respectively.

4(i). Legal Position:-

(2019) 14 SCC 318 (Suresh Kumar Goyal and others Versus State of Uttar Pradesh and another), delineated following steps for determining the veracity of a prayer for quashment raised by an accused for invoking the power vested in the High Court under Section 482 Cr.PC:-

"12. While dealing with the jurisdiction under Section 482 CrPC to quash the proceedings at the stage of issuance of process, or at the stage of committal, or at the stage of framing of charges, that is to say before the commencement of actual trial, in the light of material placed on record by the accused, this Court in *Rajiv Thapar v. Madan Lal Kapoor* laid down as under: (SCC pp. 347-48, paras 28-30)

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to

adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/ complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, 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 CrPC, 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 CrPC 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 CrPC 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 quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

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

30.2. Step two: whether the material relied upon by the accused would rule out

the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

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

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

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

In para 30.5 of the above extracted judgment, it has been held out that in case the judicial conscience of this Court is persuaded to quash the criminal proceedings in exercise of power vested in it under Section 482 Cr.PC for doing justice to the accused, then, the same should be resorted to as it would save precious court time, which would otherwise be wasted in holding a trial, especially when it is clear that the same would not conclude in the conviction of the accused.

In 2021 (12) SCALE 293 (Central Bureau of Investigation (CB) and another VS Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and another), Hon'ble Apex Court considered the scope of review that a High Court exercises while entertaining a petition for quashing of an FIR under Article 226 of the Constitution of India or Section 482 Cr.PC, as under:-

"35. The well settled test is whether, as they stand, the allegations contained in the FIR make out an offence. The locus classicus on this issue is the judgment of a two Judge Bench of this Court in Bhajan Lal (supra), where the Court provided an illustrative set of situations where the High Court may exercise its jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC. Delivering the judgment, Justice S Ratnavel Pandian held:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it

may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 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 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.”

36. In a more recent decision of a three Judge Bench of this Court in *Neeharika Infrastructure* (supra), Justice M R Shah, speaking for the Bench consisting also of one of us (Justice D Y Chandrachud), enunciated the following principles in relation to the Court exercising its jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC:

“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to

arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- 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 a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).
- 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 rather 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 and one ought not to tread over the other sphere;
- 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 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. 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 more 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;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/ disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify

what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

(emphasis supplied)"

4(ii). The eucalyptus tree was stated to be standing over the land comprised in Khasra No.117, measuring 5 Bighas 18 Biswas. The documents on record reflect that Khasra No.117 is jointly owned. Though the complainant and the petitioner have asserted their being in possession of separate specific parcels of the land comprised in this big Khasra number, however, the fact remains that the land is undivided and un-partitioned as yet. In the Jamabandi for the year 2018-19, the petitioner though has been shown to be in possession of 1 Bigha 10 Biswas of the land in Khasra No.117 in capacity of Gair Marusi, however, the fact remains that under Section 441 IPC, it is the possession that is to be taken into consideration and not the ownership. Section 441 IPC defines criminal trespass as under:-

"441. Criminal trespass.- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

Petitioner was in joint possession of Khasra No.117. The FIR has been registered against him for having committed criminal trespass over the property of respondent No.2 in Khasra No.117. In view of the joint possession of the petitioner over the land in question alongwith other co-owners, the offence of criminal trespass alleged against him in the FIR is not made out. Furthermore, even according to the complainant, the petitioner had felled the eucalyptus tree with the permission of the complainant. Looking from any angle, offence against the petitioner under Section 447 IPC is not made out.

4(iii). Insofar as the offence under Section 406 IPC is concerned, suffice to observe that it was the allegation of the complainant that after cutting the eucalyptus tree, the petitioner had taken its wood to his home. Contrary to his allegations, the Investigating Agency reported that the tree was found lying on the joint land of the parties, i.e. on Khasra No.117. The only substantive discernible grievance of the complainant was that the petitioner had not allowed him to lift the wood of felled eucalyptus tree. It appears that both the parties have their respective claims over the ownership of the land comprised in Khasra No.117. The felled eucalyptus tree was carried by the Police and kept in their safe custody. Both the parties had moved two separate applications under Section 457 Cr.PC for release of the case property, i.e. the wood of eucalyptus tree. These applications were decided by the learned Chief Judicial Magistrate, Bilaspur, District Bilaspur, vide order dated 03.11.2020. While deciding the

applications, it was observed as under:-

"11. At the outset, it is apposite to mention here that while deciding application under Section 457 of Cr.P.C, criminal Court cannot decide the question involving the principle of civil law. The police has presented the challan against Bhiku Ram for the commission of offence punishable under Sections 406, 447 of IPC. When the contentions of respective parties are perused in entirety, it is not in dispute that tree was cut down from the land comprised in khasra No.117 was 7.11 bighas. Further, it is not in dispute that in the revenue record, Dina Nath @ Nikka Ram is shown as owner in possession of 5.18 bighas and Bhiku Ram is shown in possession of 1.10 bighas as 'Gair Marusi Tenant' and 0.3 bighas is shown in the possession of Gardasu. Dina Nath claimed that he is owner of entire land and entries qua possession of Bhiku Ram tenant are wrong, whereas, Bhiku Ram claimed that he has become owner in possession of the land to the extent of 1.10 bighas of operation of law under Section 104(3) of H.P. Tenancy and Land Reforms Act. So far as the ownership of parties are concerned, it is for the parties to get their rights declared from the competent civil Court. But, in the instant case, at this state, Court is concerned as to the fact as to who is entitled for release of the logs of wood, which were taken into possession by the police during the investigation of the case.....

14. Demarcation report has been placed with the challan. Though in the demarcation report, it is said that possession cannot be ascertained as there is no tatima. But, when statement of witnesses are perused, it would prima facie, suggest that tree was cut down from the land in possession of Dina Nath @ Nikka Ram. Seizure memo vide which wood was taken into possession, suggest that logs were not taken into possession from any of the party, rather, taken up from the spot and as investigation conducted by police, prima facie, suggest that tree was cut down from the land of the Dina Nath @ Nikka Ram, it would be in the interest of things to release the wood to the Dina Nath @ Nikka Ram complainant in the case on his furnishing indemnity bonds so that, in case, ultimately, Bhiku ram proves that logs belonged to him, he can be compensated. Moreover, Dina Nath @ Nikka Ram is ready to furnish bonds to the satisfaction of the Court. Accordingly, without going into the question of title and ownership, the Court is of the view that till rights are finally adjudicated upon, Dina Nath @ Nikka Ram is entitled for the release of the tree subject to furnishing indemnity bonds in the sum of Rs.25,000/- with one surety of like amount. Parties are at liberty to approach the competent civil Court. The application filed by the applicant Dina Nath @ Nikka Ram is allowed and is accordingly disposed off. The application filed by Bhikhu Ram is dismissed. Indemnity bonds in the sum of Rs.25,000/- with one surety of like amount furnished, attested and accepted by me. Let a necessary release order in this regard be issued to the SHO, P.S. Jhandutta, District Bilaspur, H.P. to release the wood of eucalyptus tree to Dina Nath @ Nikka Ram, after preparing detailed inventory and obtaining photographs. Learned counsel for the parties and Id. APP for State be informed accordingly through E-mail. Papers be tagged with main case FIR. Both the

applications be tagged with main case file, after due completion.”

In the aforesaid order, though the release of wood of eucalyptus tree was allowed in favour of the complainant, however, the observations were made that in terms of the demarcation report on record, the possession over the land in question could not be ascertained. Learned Chief Judicial Magistrate, Bilaspur, without going into the question of title and ownership, was of the view that till the rights are finally adjudicated upon, the complainant deserves to be released the logs of wood. Accordingly, the application of the complainant in that regard was allowed. This order was affirmed by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur on 10.08.2021.

It can safely be concluded from the record that the petitioner and complainant are at loggerheads to establish their claims of title and possession over the land in question. A civil suit is also stated to be pending between them in this regard in the Court of learned Senior Civil Judge, Ghumarwin, District Bilaspur.

This being a civil dispute, it will be appropriate to refer to a judgment passed by the Hon'ble Apex Court on 30.01.2023 in Criminal Appeal arising out of SLP (Crl.) No.5866 of 2022 (Usha Chakraborty & Anr. versus State of West Bengal & Anr.), wherein, criminal proceedings were quashed after noticing that the attempt was to give a cloak of criminal offence to a civil dispute. Relevant paras from the judgment are as under:-

“5.1 In *Paramjeet Batra v. State of Uttarakhand & Ors.*, this Court held:-

“12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

5.2 In *Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors.*, it was held that:-

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat

which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

5.3 In *Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors.*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

5.4 In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under:-

- (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 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.

5.5 In *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others*, a three Judge Bench of this Court laid down the following principles of law:-

"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 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 abuse 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 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.”

11. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015 , he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.”

For the foregoing reasons, even the offence under Section 406 IPC is also not

made out against the petitioner.

4(iv). It is well established that jurisdiction under Section 482 Cr.PC is to be exercised sparingly with care and caution. Well defined legal principles for quashment juxtaposed over the allegations levelled by respondent No.2 and the investigations carried by respondent No.1, leave no scope but to hold that instant is a fit case for exercise of inherent power. The offence of criminal trespass has been alleged by respondent No.2 over the land, which is in the joint possession of the petitioner, respondent No.2 and one Gurdass. Respondent No.2 might be having some genuine grievance of civil nature with the petitioner, however, the same cannot be redressed by giving the dispute a cloak of criminal proceeding. In view of the joint possession of the land in question, the offence is not made. For securing ends of justice to prevent abuse of process of law, continuation of the proceedings against the petitioner arising out of FIR No.90 of 2020 are not warranted.

5. Consequently, the present petition is allowed. FIR No.90/2020, dated 20.07.2020, registered against the petitioner under Sections 406 and 447 IPC at Police Station Jhandutta, District Bilaspur, H.P. is quashed. Consequential proceedings are also set aside.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.