

(2012) 12 GAU CK 0050

In the Gauhati High Court

Case No : Criminal Petition No. 01, 02 and 03 of 2012

Brijesh Pandey and Others

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156, 156(1), 156(3), 161
Penal Code, 1860 (IPC) — Section 109, 147, 148, 166, 167
Prevention of Corruption Act, 1988 — Section 13(ii)

Citation : (2013) 3 GLT 502

Hon'ble Judges : Subhasis Talapatra, J

Bench : Single Bench

Advocate : A.K. Bhowmik and Mr. R. Datta, for the Appellant; A. Ghosh, Addl. PP, Mr. S. Sarkar and Mr. D.C. Kabir, for the Respondent

Final Decision : Allowed

Judgement

Subhasis Talapatra, J.—All these criminal petitions filed u/s 482 of the Code of Criminal Procedure for quashing the FIR in Sidhai P.S. Case No. 01 of 2012 u/s 166/167/182/34 of IPC are tied up together for the challenge as projected in those petitions is identical and set up in a similar set of fact and circumstances, with some inconsequential variations. The respondent No. 2, hereinafter referred to as the complainant for convenient reference had been serving as the Jr. Engineer, Grade-I under the Rural Development department and he had been placed under suspension on 30.05.2005 in contemplation of a disciplinary proceeding. On 28.05.2005 the memorandum of charges was furnished affording him the opportunity to file the written statement of defence. The imputations are for insubordination and indiscipline of the highest order etc. The complainant was found guilty and penalty was imposed by the order dated 07.04.2004 by the District Magistrate and Collector, West Tripura. Even thereafter some reports had been received from the Block Development Officer (the petitioner in Crl. Pet. No.

03 of 2012) by the petitioner in Crl. Pet. No. 01 of 2012 who was holding the post of District Magistrate & Collector at the relevant point of time and the disciplinary authority so far the complainant is concerned. On such reports the petitioner of the Crl. Pet. No. 01 of 2012 issued a memorandum dated 01.09.2010 asking the complainant-respondent to furnish an explanation as to why a disciplinary action should not be taken against him for committing financial irregularities, indiscipline and insubordination by a show-cause dated 28.10.2010 issued by the petitioner of the Crl. Pet. No. 01 of 2012. The complainant was placed under suspension in contemplation of a disciplinary proceeding under Rule 10 of the CCA (CC&A) Rules, 1965 with immediate effect. The memorandum dated 01.09.2010 and the order of suspension dated 28.10.2010 are available at Annexures 2 and 3 to the Crl. Pet. No. 01 of 2012. The petitioner in the Crl. Pet. No. 01 of 2012 had also received one communication from the leader of the opposition, Tripura Legislative Assembly on 19.08.2010 containing some other allegations against the complainant for financial irregularities and for misappropriation of government money. The leader of the opposition, Tripura Legislative Assembly also requested the petitioner of the Crl. Pet. No. 01 of 2012 for causing inquiry. The said communication as received from the leader of the opposition was sent for comments to the petitioner of the Crl. Pet. No. 02 of 2012 who was holding the post of the Executive Engineer, Rural Development, West Tripura Division No.-I having his office at Gurkhabasti, Agartala. He was also asked for a report. The said communication dated 01.09.2010 and the letter dated 19.08.2010 asking for a report from the petitioner of the Crl. Pet. No. 02 of 2012 are available at Annexures-4 and 5 respectively to the Crl. Pet. No. 01 of 2012.

2. In due course, the report was received from the petitioner of the Crl. Pet. No. 02 of 2012 on 11.01.2012 which was prepared by the Inquiry Committee as set up by the petitioner in Crl. Pet. No. 02 of 2012 comprising of three officers. On the basis of the said report a show cause notice was issued to the complainant asking him why legal and disciplinary action should not be initiated against him for misappropriation of Rs. 27,69,261/-, for negligence of duty and for submission of the false certificate of payment etc.. The copy of the said inquiry report dated 11.01.2011 and the memorandum dated 01.04.2011 by which the petitioner was asked to explain are available at Annexures 6 and 7 to the Crl. Pet. No. 01 of 2012. The complainant made a reply on 08.04.2012 denying all the allegations. He also denied all the allegations as furnished in the First Information Report dated 06.05.2011 which was lodged by the petitioner of the Crl. Pet. No. 03 of 2012 on 06.05.2011. It is to be noted that the said FIR was registered as the Sidhai P.S. Case No. 43 of 2011 u/s 409/468 of the IPC read with Section 13(ii) of the Prevention of Corruption Act, 1988. Another FIR was lodged against the complainant on 06.05.2011 to the Officer-in-charge, Lefunga Police Station for misappropriation of Rs. 13,55,795/-. It is stated in the petitions for quashing the FIR that both the cases are under investigation by the Sub-Divisional Police Officer, Sadar, Agartala. On 22.03.2011 the petitioner in Crl. Pet.

No. 01 of 2012 had also received one report from the Additional District Magistrate & Collector, West Tripura wherein it revealed that complainant had falsely certified that he had received Aluminum windows, Aluminum glass doors and Aluminum grills for construction of Mohanpur CHC Hospital valued at Rs. 1,87,359/- and by such mis- representation and the false certification the complainant made payment to the supplier. Both the FIRs and the report dated 22.03.2011 as submitted by the Additional District Magistrate & Collector, West Tripura as referred are available at Annexures 9 and 10 to the Crl. Pet. No. 01 of 2012 and in other petitions.

3. Having prima facie satisfied, the petitioner in the Crl. Pet. No. 01 of 2012 had drawn a disciplinary proceeding against the complainant by the memorandum dated 07.10.2011 on four different charges for unauthorized absence, misappropriation of the government money, for causing loss to the Government exchequer and for disobedience of the transfer order etc. and the said proceeding has by now reached the stage of inquiry and one inquiry officer for the proceeding has also been appointed. On 05.12.2011 the order of suspension was revoked by the petitioner in Crl. Pet. No. 01 of 2012. Copies of the memorandum of charge dated 07.10.2011 and the order of revocation of suspension dated 5.12.2012 are available at Annexures 11 and 12. Thereafter, the complainant filed a complaint in the Court of the Chief Judicial Magistrate being CR Misc. No. 156 of 2011. The Chief Judicial Magistrate, West Tripura, Agartala by an order dated 21.12.2011 forwarded the said complaint to the Officer-in-Charge of the Sidhai Police Station u/s 156(3) of the Cr.P.C. and accordingly the Sidhai PS. Case No. 01 of 2012 u/s 166/167/182/34 of the IPC was registered on 02.01.2012 against the petitioners in all these criminal petitions. The said complaint on the basis of the Sidhai P.S. Case No. 01 of 2012 was registered and a copy thereof is available at Annexure-13 to the Crl. Pet. No. 01 of 2012. The said complaint is under challenge in these petitions.

4. Mr. A.K. Bhowmik, learned Sr. counsel submitted that with a view to harass the petitioners the said complaint with false, fabricated, baseless, manipulated and vague allegations has been filed. In paragraph-10 of the complaint, the complainant alleged that the petitioners in Crl. Pet. No. 01 of 2012 by misusing his power prepared a false document in the month of May, 2011 by ante dating it on 25.01.2011 and further that the said letter was fabricated. To nourish such contention he referred the letter of the petitioner of the Crl. Pet. No. 01 of 2012 dated 25.01.2011 and the letter of his successor dated 26.07.2011. But those documents do not support the allegation that the letter of the petitioner No. 1 dated 25.01.2011 was either fabricated or false. The complainant further alleged in the paragraph-13 of the complaint, having reference to the Annexure-P/6, that a vigilance inquiry was drawn up against one Bikash Bhowmik, Jr. Engineer and Manik Lal Das, the petitioner in the Crl. Pet. No. 02 of 2012, but later on the disciplinary proceeding had been directed to be taken not against Bikash Bhowmik but against the complainant and not against the petitioner in the Crl. Pet. No. 03 of 2012 but against the former Block Development Officer, namely,

Pradip Acharjee who was predecessor to the said petitioner in the post of Block Development Officer. According to Mr. Bhowmik, learned senior counsel, the complainant had suppressed and held back the first three pages of the note No. 3(73) of the concerned file and produced only the pages 4 and 5 of the note sheet. On the basis thereof the complainant framed some statements that the disciplinary actions were proposed against another Jr. Engineer and the petitioner of Crl. Pet. No. 03 of 2012. Those missing pages have been supplied by the petitioners at Annexure-15 to the Crl. Pet. No. 01 of 2012. Mr. Bhowmik, learned senior counsel vehemently submitted that the allegations or the documents as made available or furnished by the complainant do not make out a prima facie case and therefore the reference of the Chief Judicial Magistrate for registration of the case u/s 156(3) of the Cr.P.C. is not sustainable. Apart that he pointed out that no sanction as required u/s 197 of the Cr.P.C. was obtained by the complainant while the alleged offence as it transpires, has been committed while acting in discharge of their official duties. Mr. Bhowmik, learned senior counsel further advanced a plea that the provision of Section 356(3) of the Cr.P.C does not empower the competent Judicial Magistrate (any Magistrate empowered u/s 190 of the Cr.P.C.) to order an investigation without having been satisfied regarding the materials in the complaint. He further submitted that the other petitioners in compliance to the directions of the superior authority had forwarded some reports. In some point of time, the petitioner in the Crl. Pet. No. 03 of 2012 made some reports in usual official transactions in discharge of his official duties. The allegations of creating false documents as slapped, according to the petitioner of the Crl. Pet No. 01 of 2012, are absolutely without basis.

5. Mr. D.C. Kabir, learned counsel alongwith Mr. S. Sarkar, learned counsel appearing for the complainant referring to the documents submitted that this Court should not use its inherent power for quashing the FIR/complaint inasmuch as the materials so placed in the complaint sufficiently established a case for investigation. He further submitted that the High Court should not embark upon an inquiry as to whether the evidence as placed is reliable or not. As ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 482 of the Cr.P.C. for quashing the criminal proceedings. On reference to the allegations as made in the complaint, he further submitted that those require investigation by the police. The learned counsel for the complainant controverted the statement of Mr. Bhowmik, learned senior counsel that there is no prima facie material in the complaint for making out the offence as alleged. As sequel to that, the learned counsel for the complainant stated that this Court would refrain from interfering with the complaint/FIR in as much as it discloses the commission of offence as alleged as the statutory power of police to investigate cannot be interfered with in exercise of inherent power of the Court. This Court is not holding a parallel trial and is not called upon to embark on an inquiry as to

whether the evidence in question can be relied upon or is sufficient to proceed further or not and ultimately, the learned counsel for the complainant submitted that in the fact and circumstances of the case it would not be just to exercise the said special power when the investigation is still underway as it would amount to stifling the said proceeding. For appreciating the rival contentions as advanced by the counsel it would be appropriate to excerpt the relevant parts of the complaint which are admittedly made basis for launching such investigation:

8. The complainant humbly submit that the accused No. 1 and accused No. 3 being rabid against the complainant for trusting the judiciary Court for his natural justice and also after facing difficulties in concealing their misdeed and irregularities, has there after taken accused No. 2 in their confident and directed accused No. 2 to inquire and assess all those works implemented by the complainant in Mohanpur R.D. block which include all those works which the complainant had handed over to his successor named Sri Bikash Bhowmik, Junior Engineer. Mohanpur Block before proceeding for study leave from 09.08.2010 onwards and also all those works which the complainant had completed almost 2-3 years back and were being handed over for pubic benefit/use since than.

6. Regarding the averments made in the counter affidavit as filed by the complainant the counsel for the complainant submitted that it appears that the Investigating Agency is under severe stress and duress not to carry on the same in a fair manner and these petitions are simply to subvert the course of justice. Apart that another plea that has been advanced is that without challenging the order directing investigation by the Chief Judicial Magistrate as passed in exercise of his power conferred u/s 156(3) of the Code of Criminal Procedure, 1963, whether this petition u/s 482 of the Code of Criminal Procedure would sustain inasmuch as this petition for quashing has been designed to circumvent the entire process. Thus, these petitions must fails. Even by the order dated 16.01.2012 this Court directed to carry on a free and fair investigation and to file a status report. It stands to show that there are materials for investigation. In the order dated 16.01.2012 this Court observed as under:

I have seen the complaint and at mis stage this Court prefers not to make any comment on the complaint.

Admit this petition, issue notice returnable on 7th February, 2012.

Petitioner shall take steps on the respondent No. 2 within a period of three days from today.

It is made clear that on 07.02.2012 there would be an attempt for final hearing of this case and as such the respondent No. 2 is directed to file the reply, if so prefers, within 07.02.2012.

The learned Addl. P.P is directed to obtain an updated status report from the police as well as the case diary of the investigation and produce the same before this Court for examination and for passing the necessary order. Though this

Court is not inclined to stay the investigation in the matter but for ends of justice this Court thinks it would be proper that the petitioner shall not be arrested till the returnable date i.e., 07.02.2012.

7. Mr. Ghosh, learned Addl. Public Prosecutor for the State submitted the updated status report as called for alongwith the case diary for examination by this Court. The case diary so produced by Mr. Ghosh, learned Addl. P.P has been meticulously scrutinized and it is found that no incriminating material has so far been collected against the petitioners, rather it appears that the materials so far collected have vindicated innocence of the petitioners.

8. While summing up, Mr. Bhowmik, learned counsel succinctly said that even if all the allegations as made in the complaint/First Information Report are believed in their entirety those would not constitute any offence or make out any case. He further submitted that the law in this regard has been well crystallized by the Apex Court in catena of decisions that the litmus test whether a First Information Report would be quashed or not is that if the allegations are believed in its entirety whether those make out a case for investigation or not. If it is found that no offence on the basis of the allegation, is made out, it would be for ends of justice, the Court should exercise inherent power for quashing the FIR or the complaint to protect the citizen from the mis-chief and from abuse of the process of the Court.

9. Mr. Bhowmik, learned counsel also referred a decision of the High Court of Kerala in Prabhakara Panicker M.B. Vs. State of Kerala in Cri. MC No. 4089 of 2008 where it has been held that:

9. The other offence with which the petitioner stand charge-sheeted is one punishable u/s 167 IPC. The said section reads as follows:

167. Public servant framing an incorrect document with intent to cause injury.--Whoever, being a public servant and being, as [such public servant, charged with the preparation or translation of any document or electronic record, framed, prepares or translates the document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The following are the ingredients which will have to be made out:

- (i) The accused at the relevant time was a public servant,
- (ii) the accused was entrusted with the duty of preparation of a document,
- (iii) The accused had framed, prepared or translated the document incorrectly; and
- (iv) The accused did so with the intent or knowledge that it would cause or was likely to cause injury to any person. Here also, the private complaint and the

police report are silent regarding the basis for the contention of the complainant that the replies given by the accused were false. Likewise, there is no allegation that the petitioners/accused gave the replies with the intent or knowledge that those replies would cause or were likely to cause injury to the complainant. As noted earlier, Annexure B is not the reply given by either of the petitioners. It is given by the Senior Superintendent attached to the office of the Electrical Section of the K.S.E. Board. But the complainant has not chosen to prosecute the Senior Superintendent who has given Annexure B reply to Annexure E application. It cannot even remotely be said that the petitioners who took charge in their respective offices nearly two years after the alleged mishap had given Annexure A and C replies with the intent or knowledge that their replies would cause or was likely to cause injury to the complainant or his wife. Thus, under no account could it be said that Sections 166 and 167 IPC are attracted going by the statements in the charge-sheet or the averments in the private complaint.

10. Before appreciating the rival contentions of the learned counsel appearing for the parties and making relevant scrutiny of the records those are made available with the complaint and to some extent with the petitions it would be appropriate to re-visit the penal provisions of the alleged offences. Section 166 and Section 167 of the IPC provides as under:

166. Public servant disobeying law, with intent to cause injury to any person.--Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he, will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

Illustration.--A. being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

167. Public servant framing an incorrect document with intent to cause injury.--Whoever, being a public servant and being, as [such public servant, charged with the preparation or translation of my document or electronic record, framed, prepares or translates the document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Similarly, Section 182 provides that:

182. False information, with intent to cause public servant to use his lawful power to the injury of another person.--Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-(a) to do

or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Illustrations.-

(a) A informs a Magistrate that Z, a police officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquires and institute searches in the village to the annoyance of the villagers or some of them. A has committed of offence under this section."

Unless the materials so far furnished by the complainant make out the alleged offences, there would be hardly any relevance of provisions of Section 34 of the IPC. Within the ambit of Sections 166, 167 and 182 of IPC, the materials so far furnished in the complaint or along with may be appreciated briefly.

11. In the complaint it has been stated by the complainant:

the BDO Mohanpur R.D. block, i.e. accused No. 3 by misusing his official position and power has vindictively plotted a story of financial defalcation against the complainant. Intention behind was to present it was prime facie evidence against the complainant and to personally benefit by misappropriating government exchequer in the name of the complainant. The accused No. 3, without informing the complainant or serving any work orders or taking any requisitions for advance from the complainant against execution of those works under MGNRGC Scheme has illegally deposited the labour wages amounts and the materials cost amount as advance in the official Joint Acct. No. 22259 available at TGB Mohanpur between the complainant and the BDO Mohanpur R.D. Block.

5. The complainant further humbly submit that the accused No. 3 has than maliciously reported to accused No. 1 that the complainant has taken those advances and has proceeded for pursuing two year M. Tech. course at the National Institute of Technology, Agartala as part-time government sponsored candidate from 09.08.2010 onwards without returning back the amount or

submitting adjustments against those amounts.

6. The complainant also humbly submit that the accused No. 1 on the basis of the false report submitted by accused No. 3 against the complainant has put the complainant under suspension on 28th Oct. 2010. The accused No. 1 has further gone ahead to damage the career of the complainant. He on that very date has illegally sent a letter to the Director, NIT Agartala to return back the complainant from his M. Tech course. However the director NIT Agartala has turned down the request of the accused No. 1.

7. The complainant and his family have undergone a tremendous shock after receiving the suspension letter. Complainant's father-in-law failed to sustain the trauma and has expired. The complainant has challenged the justification of the suspension order in the Hon"ble Gauhati High Court. Agartala Bench. The Hon"ble High Court has admitted the writ petition of the complaint and has issued notice to both accused No. 1 and accused No. 3.

8. The complainant humbly submit that the accused No. 1 and accused No. 3 vein rabid against the complainant for trusting the judiciary Court for his natural justice and also after facing difficulties in concealing their misdeed and irregularities, has there after taken accused No. 2 in their confident and directed accused No. 2 to inquire and assess all those works implemented by the complainant in Mohanpur R.D. Block which include all those works which the complainant had handed over to his successor named Sri Bikash Bhowmik, Junior Engineer Mohanpur Block, before proceeding for study leave from 09.08.2010 onwards and also all those works which the complainant had completed almost 2-3 years back and were being handed over for public benefit/use since than.

9. That more than 90 days has rolled by since the complainant was put under suspension but no review committee was formed by the accused No. 1 nor has the suspension been reviewed as confirmed by the O/O the D.M and Collector (West) vide letter No. 1(32)/DM(W)/ESTT/BLOCK/LOOSE FILE/04/1149 dated 26.02.2011

Copy of the letter dated 26.02.2011 is herewith annexed and is marked as P-1.

10. The complainant humbly submit that the accused No. 1 after learning that the complainant has pleaded to the higher authority for revocation of his suspension on the ground that as CCS(CCA) Rule 1965 if a suspension is not reviewed before completion of 90 days than continuation of the suspension is treated as invalid and also after learning the fact that the fault committed by him for forwarding the original application form of the complainant to the Director, NIT Agartala for admitting the complainant in two year M. Tech course as government sponsored part-time candidate and for making such commitment of giving two years leave of absence to the complainant for completing the course without taking any approval from the government has come to the knowledge of the government, so in desperation to cover his fault, the accused No. 1 by misusing his power has prepared a false document in the month of May 2011 by

giving back date of 25.01.2011 and dispatched it without dispatch No. stating that the suspension of the complainant has been reviewed and the period of suspension has been extended further for 180 days. That the letter dated 25.01.2011 is a fabricated document is being confirmed by the present D.M. and Collector (West) vide his Memorandum No. 1(32)/DM(W)/ESTT/BLOCK/SHADOW FILE/2011/5023 dated 26.07.2011 in response to an application submitted by the complainant on 28.05.2011.

Copy of the letter dated 25.01.2011 & letter dated 28.05.2011 together and memorandum dated 26.07.2011 are herewith annexed and are marked as P/2 & P/3 respectively.

11. The complainant humbly submit that the accused No. 2 and accuse No. 3 under the connivance instigation of accused No. 1 has conspired against the complainant and prepared a fabricated, false and motivated assessment report after preparing some false documents, making some forged reports, which are far away from truth and after conducting that so called inquiry of those works which was being implemented by the complainant. The accused have infringed the service rules, disobeyed the law, breached their trusted post and also has misused their power in order to harass the complainant and his family and to pressurize the complainant to withdraw the case which he had filed before the Hon"ble High Court. They have adopted all sorts of illegal means in their desperation to defame the creditability and reputation of the complainant and his family. Moreover, they have adopted such unlawful means with an ulterior motive of teaching the complainant a lesson for keeping faith in judicial justice and for misappropriating government money and in turn with a sinuosity to put the blame upon the complainant.

12. The complainant humbly submit that in order to present the complainant as corrupt and dishonest and in order to harass the complainant further by helping accused No. 1 and accused No. 3 in lodging a false FIR of criminal misconduct against the complaint, the accused No. 2 has prepared a motivated assessment report by illegally calculating the labour wages and cost for the purchase of petty materials at a rate which are much below the rate as specified in the approved estimate and also in the work order as reveals after comparing the rate endorsed in Annexure-III of the alleged assessment report to that of the approved estimate.

Copy of Annexure-III of the assessment report and the work orders are herewith annexed and are marked as P/4 & P/5 respectively.

12. The complainant further stated in the complaint as under:

13. That both accused No. 2 and accused No. 3 with some ulterior motive of shielding the offence of financial irregularities committed by some dishonest implementing officer and to make some easy money by giving extra financial benefit to Sri Bikash Bhowmik, J.E. against whom departmental vigilance inquiry is going on for gross disproportionate of his asset with his income, has prepared

some false and spurious reports and documents on the basis of which they have lodged the FIR against the complainant at Sidhai P.S. Here it is important to mention that prima-facie evidence against accused No. 3 for misappropriating government ex-chequer has been found by the government and departmental proceeding against him is about to be initiated.

Copy of the order for initiating vigilance inquiry and departmental proceeding against Sri Bikash Bhowmik, J. E and Sri Manik Lal Das respectively were hereto annexed and were marked as P/6 & P/7 respectively.

15. That the accused No. 1 without any evidence or taking any technical opinion from the supervising engineering officers just on the basis of innuendo has maliciously reported against the complainant that the works which he had carried out are of poor quality and not as per specification. Here it is important to mention that as per R.D. Dept., guideline if any work of project cost above Rs. 2,50,000/- is entrusted upon any Junior Engineer for implementation then the responsibility of maintaining the quality and specification is bestowed upon the supervising officer.

16. That after collecting the copies of the assessment report through RTI Act 2005 and finding that the accused have vindictively omitted many items of works which was completed by the complainant, have made some false claim, have concealed those records which reflect the quantities of materials which the complainant has returned back to the block store after completion of works and that they have fraudulently shown a bulk quantity of materials which was actually received and utilized by some other implementing officer to have been received by the complainant has therefore requested by submitted a representation on 30.05.2011 to the accused No. 2 and sending the copy of the same to accused No. 1 and accused No. 3 to rectify those error. The complainant after getting no response from any of those accused has thereafter given a notice u/s 80 of CPC 1908 to accused No. 2 on 05.07.2011 but found the result to be same.

Copy of the representation dated 30.05.2011 and notice dated 05.07.2011 were hereto annexed and were marked as P/8 and P/9 respective.

16. That other than those ambiguities detected by the complainant in the said motivated assessment report as highlighted in his representation dated 30.05.2011, the complainant further alleged that although the complainant handed over the work of the const. of Mohanpur block building and const, of CHC Hospital at Mohanpur to his successor Sri Bikash Bhowmik after concluding the centering and shattering work of 1st Floor roof slab, again it is alleged that the complainant has carried out the work of electric wiring, dismantling of existing nurse hostel and wood works of the const, of CHC Hospital at Mohanpur but the accused with an ulterior motive of drawing those amount through Sri Bikash Bhowmik and making some easy money has omitted those item in their obnoxious assessment.

17. That accused No. 2 vide his report No. F3(3)-INSP/MNP/EE/RDD/WD-1/10-11/278-79 Dated 11.01.2011 made a false claim that in his impugned assessment report.

ALL CONCEALED ITEMS HAVE BEEN CALCULATED AS CONSISTED IN THE APPROVED ESTIMATE" whereas he had calculated the consumption of Tor-steel @ 100 kg per unit of RCC work as per approved estimate.

Copy of the report dated 11.01.2011, copy of the construction statement of tor-steel as per assessment report and as per approved estimate were hereto annexed and were marked as P/10, P/11 & P/12 respectively.

17. That in desperation of shielding his and some other implementing officer"s malpractices and in order to avoid the complainant from getting an evidence against the accused of their difference in treatment, the accused No. 3 have found to be guilty of supplying information to an applicant of RTI Act 2005 by forging office document. When the applicant complaint to the Chief Information Commissioner of Tripura of his illegal deeds, the TIC, after hearing, has directed the West Tripura district administration to initiate disciplinary proceeding against the delinquent officer immediately, However it is surprising that accused No. 1 has till yet not complied to the order of the TIC.

18. That the accused have vindictively released some fully voucher treasury bills drawn by the BDO, Mohanpur after taking certificate in advance from the complainant for submitting utilization certificate to respective supplier without maintaining the procedure of taking clearance or informing the complainant. The motive behind is to present the complainant as guilty and to show the amount as outstanding in the assessment report.

19. That inspite of specific ruling given by the Apex Court to make timely payment of subsistence allowances the accused No. 3 just to give financial hardship to the complainant and his family has continuously infringed the Court direction by not making timely payment of subsistence allowances the accused No. 3 just to give financial hardship to the complainant and his family has continuously infringed the Court direction by not making timely payment of subsistence allowances to the complainant. The wife of the complainant has complained twice to the accused No. 1 in this matter and lastly even given a notice u/s 80 of CPC, 1908, but no action has been taken by accused No. 1 in this regard.

Copies of the complaint letter and notice u/s 80 of CPC, 1908 submitted by wife of the complainant hereto annexed and were marked as P/13 & P/14 respectively.

20. That the accused has adopted all means of unlawful, frivolous and filthy acts, motive is to give indiscriminate harassment to the complainant and his family member. They were subjected to social ridicule, condemnation and humiliation, they were being looked down by their colleagues, friends, kith and kin and are living a life of tarnished image, infamy and agony. The Complainant further

submit that in the assessment report of the construction of Lembucherra Shopping Complex at Lembucherra under Mohanpur R.D. Block, the accused No. 2 has vindictively shown on the basis of frivolous report submitted by the accused No. 3. that the complainant had made excess payment of about Rs. 4 lacs against purchase of ceramic tiles for the said work to the supplier. The accused No. 3 has willfully submitted the report by clubbing the amount paid for the purchase of tiles for another separate work, named, repairing of fish and meat shed at lembucherra old bazaar with that of the amount paid against the purchase of tiles for the work of Lembucherra Shopping Complex.

21. The complainant submit that, after finding that the accused were sleeping over the matter rather than rectifying the erroneous assessment report have approached the Chief Engineer, R.D. Dept. to intervene and provide him natural justice. The Chief Engineer on 16.08.2011 along with two other Superintending Engineer of R.D. Dept. in front of accused No. 2 and the complainant has verified the alleged assessment report. The after finding that the assessment reports to be erroneous and motivated has immediately disowned the alleged assessment report.

13. From these allegations in the complaint it clearly transpires that there is no ingredients of Section 166 and 167 of the IPC in as much as both the petitioner in Crl. Pet. No. 01 of 2012 and Crl. Pet. No. 03 of 2012 had not disobeyed any direction of the law to conduct themselves in such a way, intending to cause or knowing it to be likely that they will by such disobedience causing injury to any person or they had prepared or translated any document or any electronic record in a manner which they knew or believed to be incorrect, intending thereby to cause or knowing it to be likely that they may thereby cause injury to the complainant in discharge of the duties and in compliance of the superior authority they have prepared their report and the allegations regarding those reports as made by the complainant is without any material to attract to the provisions of Section 166 and Section 167 of the IPC inasmuch as regarding the report at Annexure-3 the complainant stated that if such contention is accepted by this Court it would by itself debase the necessity and purpose of making the departmental preliminary inquiry into the conduct of a public servant and no preliminary action could be taken by any authority for purpose of departmental action against any public servant. If such contention is accepted it would open the lid of the menace and it would lead to proliferation of the corrupt elements in the administration. For purpose of establishing prima facie case or taking cognizance or for direction to investigate there must be specific and definite materials, not mere sweeping comments. Those should be adequate for preliminary assessment. Similarly, there is no allegation against those petitioners in Crl. Pet. No. 02 of 2012 and Crl. Pet. No. 03 of 2012 as regards the offence u/s 182 of the IPC such allegations are directed against the petitioner No. 1 save allegation of connivance to attract the provision of Section 34 of the IPC.

14. The crux of the allegations as made against the petitioner of the Crl. Pet. No.

01 is that the said petitioner by misusing his power prepared a false document in the month of May-2011 by ante dating it to 25.01.2011 and further that said letter was entirely fabricated. There is no abiding material to show that the letter of the petitioner dated 25.01.2011 and the letter of his successor dated 26.07.2011 are in congruous to each other. Nowhere in the letter dated 26.07.2011 it has been stated that the contents of the letter dated 25.01.2012 whereby the complainant was informed by the said petitioner that the suspension order had been reviewed and thereafter it was decided that in the interest of inquiry and the disciplinary proceeding, the suspension order was extended for a further period of another 180 days. It is not under challenge that the said petitioner had no competence at the relevant point of time to pass such order neither has it been alleged that he had done so in breach of any direction of law or he had prepared it in a manner to cause injury. The revelation as made in the communication dated 26.02.2011 is of general nature when it disclosed that:

*** Besides, the matter of review of suspension is under process

Similarly, on a specific query as made by the complainant by a communication dated 28.05.2011 that whether the process of the review committee formation for reviewing his suspension and subsequently its decision was not concluded and was under process. The memorandum dated 26.07.2011 clarified that there was reference regarding the formation of the review committee for reviewing the suspension of the complainant in the communication dated 26.02.2011 as stated and nothing more. No law provides that there should be a review committee to be formed for reviewing the order of suspension. Therefore, the vague disclosure as made by the communication dated 26.07.2011 and 26.02.2011 cannot any way substantiate the allegations of the complainant. Moreover, what complainant had stated against the petitioner of the Crl. Pet. No. 1 of 2012 that he was bound by the law to review the order of suspension before completion of 90 days as per the provision of CCS(CCA) Rules, 1965 and thereby the allegation that has been made that the direction by the law has been flouted intentionally by the petitioner of the Crl. Pet. No. 1 of 2012 is also not sustainable for the reasons that Sub-rule (6) and (7) of Rule 10 of the CCS (CCA) Rules 1965 which mandate strict requirement of review have not been adopted in the State of Tripura and that position has been affirmed by this Court. Apart that, adoption of those rules by the Government of Tripura has not been established in any manner in the complaint. In view of this, this allegation as made in the complaint and the records as placed to supports those allegations, in the considered opinion of this Court do not disclose any offence u/s 166/167/182 of the IPC.

15. Areas and the manner for exercise of powers to Section 482 Cr.P.C. are by now well crystallized.

16. In R.P. Kapur Vs. The State of Punjab, the Apex Court has laid down the principles those would be governing the procedure for quashing the proceeding/ the complaint. It has been held therein that the inherent jurisdiction of the High Court can be exercised to quash proceedings in the proper cases either to

prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against the accused persons must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings in a short-circulated manner. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. It has been further held that some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases 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 manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. This is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

In *R. P. Kapur (supra)* case the Apex Court also considered the decisions rendered in *In Re: Shripad G. Chandavarkar*, *ILR 26 Cal 786*, *AIR 1954 Punjab 193* and *Nripendra Bhusan Ray Vs. Gobinda Bandhu Majumdar*, .

17. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, the Apex Court while affirming the decision of the Calcutta High Court held that the High Court was justified in quashing the investigation and re-stated the law:

If an offence is disclosed, the High Court under Article 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed, if however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has not been disclosed to the serious detriment of

the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for providing the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

18. The Apex Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, highlighted the areas where the inherent power for quashing a complaint can be exercised by the High Court. It is held therein:

It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the present Code.

19. The Apex Court in *M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another*, sounded a caution in exercise of the inherent power as conferred by Article 226 of the Constitution of India. In para 4 of *M/s. Jayant Vitamins Ltd.* (supra) it has been held that:

We have carefully examined the submission of both the learned Counsel. After going through the impugned Order and other connected papers, we feel that the High Court was not justified in quashing the investigation which is still on its way. Needless to emphasise that the further investigation in the offence is legally permissible as contemplated by Section 173(8) of Criminal Procedure Code. The learned Counsel appearing for the State when asked represents that the investigation is not yet complete and the State would come to a definite conclusion as to the culpability of the appellant only on the completion of the investigation. As repeatedly pointed out by various decisions of this Court that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation.

20. Before referring to the other decisions, it would be apposite to refer the celebrated decision of *State of Haryana and others Vs. Ch. Bhajan Lal and*

others, where the Apex Court has laid guidelines how and where the powers u/s 482 of the Cr.P.C. or under Article 226 of the Constitution of India has to be exercised for quashing the complaint/FIR or the proceeding emerging therefrom. Those may be encapsulated as under:

The following categories of cases, the High Court may in exercise of powers under Article 226 or u/s 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 F.I.R. 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 u/s 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.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise or extraordinary powers or inherent powers, quashing of FIR was not justified

21. In *State of T.N. Vs. Thirukkural Perumal*, the Apex Court having reference to the decision in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, held as under:

M.S.K. Shanmugovel Chettiyar lodged a first information report at P.S. Tallakulam against the respondents alleging commission of offences under Sections 147/148/342/323/395/500(ii) and 109 IPC. Investigation was taken in hand and some evidence was collected by the investigating agency. The respondent filed a petition u/s 482 Cr.P.C. in the High Court and by the impugned order the petition was allowed and the proceedings emanating from crime case 246/92 (supra) were quashed. From a bare perusal of the order of the learned Single Judge it appears that while quashing the proceedings reliance, has been placed upon some evidence collected by the investigating agency during the investigation. The approach of the learned Judge in relying upon such evidence, which is yet to be produced before the trial Court, to quash the criminal proceedings in crime case No. 246/92 (supra) was not proper. The power of quashing a FIR and criminal proceeding should be exercised sparingly by the Courts. Indeed, the High Court has the extra-ordinary or inherent power to reach out injustice and quash the First Information Report and criminal proceedings. keeping in view the guidelines laid down by this Court in various judgments (reference in this connection may be made with advantage to State of Haryana and others Vs. Ch. Bhajan Lal and others, but the same has to be done with circumspection. The normal process of the criminal trial cannot be cut short in a rather casual manner. The Court is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation only while dealing with a petition u/s 482 Cr.P.C. seeking the quashing of the FIR and the criminal proceedings. The learned Single Judge apparently fell into an error in evaluating the genuineness and reliability of the allegations made in the FIR on the basis of the evidence collected during the investigation. The order of the learned Single Judge cannot, therefore, be sustained. This appeal succeeds and is allowed. The impugned order of the High Court is hereby set aside.

22. The Apex Court in Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, has dwelled upon a matter where a petition for quashing of a complaint was filed at the threshold to stifle the investigation and observed that:

26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of Bhajan Lal (1992 AIR SCW 237) (supra). State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and Janata Dal Vs.

H.S. Chowdhary and Others, , since relied on by Mr. Tulsi, the guiding principles in quashing a criminal case have been indicated.

And another case in A.E. Rani Vs. V.S.R. Sarma and Others, the law has been further enunciated holding that unless it is established that the proceeding has been launch to cause the abuse of process of law, the High Court shall not exercise its power u/s 482 of the Cr.P.C. to quash the proceeding in limine by treating it sale.

23. In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the Apex Court again considered the various aspects of inherent powers as conferred by the statute u/s 482 of the Cr.P.C. or Article 226/227 of the Constitution of India and reiterated the principles as propounded by the Apex Court in Bhajanlal (supra) in the following passages:

22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior Courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

23. In Waryam Singh and Another Vs. Amarnath and Another, this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate Courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, where the High Court said that the power of superintendence conferred by Article

227 was to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

24. In AIR 1975 1297 (SC) , this Court again reaffirmed that the power of superintendence of High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate Court or tribunal and that its function was limited to seeing that the subordinate Court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, "as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings." The Court referred with approval the dictum of Morris, L.J. in *Rex v. Northumberland Compensation Appeal Tribunal* (1952) 1 All ER 122.

25. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , this Court observed as under:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

24. In *State of Karnataka Vs. M. Devendrappa and Another*, enunciated the law as under:

Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court.

It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely:

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of the process of Court and
- (iii) to otherwise secure the ends of justice.

It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*Quanta lex a liquid aliqui concedit, conceder videtur in sine que ipsa, esse non protest*" (when the law gives a person anything it gives him that without which it cannot exist).

25. In *Dy. Commissioner of Prohibition and Excise, Nizamabad Division, Nizamabad, Andhra Pradesh and Another Vs. Balaji Cattle Feeds and Another*, the Apex Court reiterated the same law.

26. In *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, the Apex Court restated the law on consideration of the following cases as under:

Janata Dal Vs. H.S. Chowdhary and Others, , *Dr. Raghubir Sharan Vs. The State of Bihar*, , *R.P. Kapur Vs. The State of Punjab*, , *State of Haryana v. Bhajan Lal*, (1992) Supp. (I) SCC 335, *Dhanalakshmi Vs. R. Prasanna Kumar and Others*, ; *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, , *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, , *State of Kerala and Others Vs. O.C. Kuttan and Others*, , *State of U.P. v. D.P. Shanna*, (1996) 7 SCC 705 , *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, , *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, , *Rajesh Bajaj Vs. State NCT of Delhi and Others*, , *State of Karnataka Vs. M. Devendrappa and Another*, .

(8) Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex a liquid alicui concedit, conceder videtur et id sine quo resipsae esse non protest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to *quash* any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur Vs. The State of Punjab*, , this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(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.

10. In dealing with the last case, 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 u/s 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 should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

11. The scope of exercise of power u/s 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 u/s 155(2) of the Code.

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

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

As noted above, the powers possessed by the High Court u/s 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. The 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 and Raghubir Saran (Dr.) v. State of Bihar. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In 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 cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 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 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 that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint 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 proceedings.

12. The above position was recently highlighted in State of Karnataka Vs. M. Devendrappa and Another, .

27. In Md. Malek Mondal Vs. Pranjal Bardalai and Another, the Apex Court further reiterated the law as regards the quashing of the complaint holding that the wide extraordinary power of quashing as vested with the High Court is to be exercised

sparingly and with caution and not to stifle legitimate prosecution. Such a power is required to be exercised in a case where the complaint does not disclose any offence and it is frivolous, vexatious or oppressive. At this stage, there cannot be meticulous analysis of the case.

28. In *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, the Apex Court re-stated the law with further clarity which may be reproduced as under:--

The principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with maladies/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

The Apex Court while formulating these principles has considered the following precedents including the *Bhajanlal*(supra):

Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , State of Haryana and others Vs. Ch. Bhajan Lal and others, , Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, , Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, , State of Bihar Vs. Rajendra Agrawalla, , Rajesh Bajaj Vs. State NCT of Delhi and Others, , M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, , M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, , M. Krishnan Vs. Vijay Singh and Another, and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, .

29. In a contemporaneous decision the Apex Court in Shaksan Belthissor Vs. State of Kerala and Another, the Apex Court considered all the precedents as far as practicable within the short compass and re-affirmed the earlier position of law in the following passages as excerpted:

14. The scope and power of quashing a first information report and charge sheet u/s 482 of the Cr.P.C. is well settled. The said power is exercised by the Court to prevent abuse of the process of law and Court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

15. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations made in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently- absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused:

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

16. In Drugs Inspector, Palace Road, Bangalore Vs. Dr. B.K. Krishnaiah and

Another, it was held by this Court that:

5. In a quashing proceeding, the High Court has to see whether the allegations made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence.

In the said decision this Court refused the prayer for quashing of the complaint on the ground that there were sufficient allegations in the complaint to make out a case that the accused persons were responsible for the management and conduct of the firm and, therefore, the extent of their liability could be and should be established during trial.

17. In *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, it was held that when on the allegation made in the complaint, a clear case was made out against all the respondents (accused persons), the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence.

18. In *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , this Court observed as follows in para 8:

8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows:

5. ...Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence, which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

However, in paragraph 108 of Bhajan Lal (supra) the Apex Court referred to and relied upon its earlier judgment in Sheonandan Paswan v. State of Bihar, wherein it has been held as under:

16. It is a well established proposition of law that a criminal prosecution, it otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant:

Thus, in such circumstances, the issue of mala fides becomes irrelevant. The above decision was followed by the Apex Court in Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. In paragraph 28 of the said judgment this Court held thus:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

23. Further, this Court observed in S.W. Palanikar Vs. State of Bihar that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. It observed as follows:

8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal

contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. One of us (D.P. Mohapatra, J.), speaking for the Bench, in *Hridaya Ranjan Prasad Verma v. State of Bihar* on facts of that case, has expressed thus:

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence, To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

(emphasis supplied)

24. This Court in the case of *Indian Oil Corporation v. NEPC India Ltd.*, at page 747-48 has observed as under:

12. The principles relating to exercise of jurisdiction u/s 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few: *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre*, *State of Haryana Vs. Bhajan Lal*, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, *State of Bihar v. Rajendra Agrawalla*, *Rajesh Bajaj Vs. State NCT of Delhi*, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*, *Hridaya Ranjan Prasad Verma v. State of Bihar*, *M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd.* Vs. *Mohd. Sharaful Haque..* The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without

examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

25. This Court has recently in *R. Kalyani Vs. Janak C. Mehta & Ors.* observed as follows:

15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a

ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

30. On relevant consideration of the materials so far placed with the complaint as well as allegations made in the complaint, this Court since has observed that if the allegations are believed in its entirety within the legal campus no offence as alleged has been made out by the respondent No. 2 (the complainant) and moreover, it appears that the allegations are the counter blast towards the departmental action as proposed against the complainant. The assessment of the complainant further leads to the irrefutable inference that there is no material to make out the alleged offences. As such unless, the Sidhai PS case No. 1 of 2012 as instituted u/s 166/167/182/34 of IPC be not quashed, this Court would be failing in its duty as outlined by the Apex Court inasmuch as no material is found to allow the prosecution to continue. While this Court has been considering the materials, it has taken care of the observation of the Apex Court as laid down in *State of Bihar Vs. Rajendra Agrawalla*, where the Apex Court held referring to *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, as under:

5. It has been held by this Court in several cases that the inherent power of the Court u/s 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the Court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In a recent Judgment of this Court to which one of us (Hon. K. Ramaswamy, J.) was a member it has been held, following the earlier decision in *Mrs. Rupan Deal Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr.*

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must

be remembered that FIR is only an initiation to move the machinery and to investigate into cognisable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded, The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence, on that evidence and proceed further with the trial. If it" reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process original is availed of in laying a complaint or FIR itself does not disclose at all any cognisable offence - the Court may embark upon the consideration thereof and exercise the power.

When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available. When the Court exercises its inherent power u/s 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.

This Court has considered the impact of quashing of the criminal investigation and gathers that it would only advance and secure the ends-of justice and it would not cause. further abuse of the legal process. As it appears to this Court that the complaint has been filed with mala fide intention to wreak the private vengeance. Another aspect has surfaced that the Magistrate who is authorized by law to take cognizance of the complaint u/s 190 of the Cr.P.C. without giving due consideration or on making some general observation cannot direct investigation in exercise of powers u/s 156(3) of the Cr.P.C. This aspect of the matter requires consideration as the Magistrate is saddled with certain duties even though not provided expressly in the statute. In Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others, Karnataka High Court held as under:

*** when the allegations made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3). In the present case, the Magistrate without applying his mind had

directed an investigation by police which is without passed jurisdiction. Therefore, the order passed directing the police investigate under Sub-section (3) of Section 156. Cr.P.C. passed without jurisdiction is liable to be quashed by this Court either u/s 482 Cr.P.C. or under Article 226 of the Constitution of India where learned Magistrate has not at all applied his mind before directing police investigation u/s 156(3) of the Cr.P.C. If the Magistrate had applied his mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged u/s 167, IPC. On this count alone the direction given by the Magistrate is liable to be quashed. The Hon"ble Supreme Court in State of Haryana v. Bhajan Lal has held that the High Court could either exercise its power under Article 226 of the Constitution of India or u/s 482, Cr.P.C. and quash the investigation to prevent abuse of the process of law or to secure the end of justice. It has been held that where uncontroverted allegations made in the complaint do not disclose the commission of a cognizable offence justifying an investigation by police, the High Court is empowered to quash such an investigation.

31. It would be the duty of the Court at the time of exercising its power u/s 156(3) of the Cr.P.C. to consider the allegations meaningfully and to find out that whether those disclose any cognizable offence or not and that, the relevant consideration has to be made. Without such consideration, directing the statutory authority to investigate the complaint would be disservice to the concept of securing the justice. In the present case, it emerged that the Chief Judicial Magistrate has failed to take such exercise as would be evident from the order dated 17.12.2011 as passed by the Chief Judicial Magistrate, West Tripura, Agartala in C.R. Misc. Case No. 156 of 2011. For appreciation the entire order is reproduced hereunder:

17.12.2011

Ld. Counsel for the complainant is present. Report received from O/C, West Agartala P/S. Perused the report.

It reveals that it is under the jurisdiction of Sidhai P/S.

Send the complaint petition along with cop of this order to the O/C, Sidhai P/S for investigation and taken necessary action on the complaint u/s 156(3) of Cr.P.C. by the next date.

To 02.0.2012 for the report of O/C.

Sd/ Chief Judicial Magistrate West Tripura::Agartala

For these reasons as well the entire investigation is liable to be scuttled, in as much as such is not a legitimate culmination of the complaint as contemplated in law.

On a cumulative appreciation of the fact and circumstances of the case as illustrated and on analysis of materials as placed alongwith the complaint, First Information Report as well as the investigation being Sidhai P.S. Case No. 1 of 2012 u/s 166/167/182/34 of IPC are hereby quashed.

Case diary be returned to Mr. A. Ghosh, learned Addl.P.P. appearing for the State.

Accordingly, all these three criminal petitions being Crl. Pet. No. 01 of 2012, Crl. Pet. No. 02 of 2012 and Crl. Pet. No. 03 of 2012 are allowed. Interim orders as passed earlier shall stand vacated.