

(2013) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Misc. Criminal Application (For quashing and set aside F.I.R./Order)
No. 8353 of 2012

Doliben Kantilal Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(8), 190, 397, 397(2)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 465

Citation : (2013) 2 GLR 1289

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Nanavati and Jal Soli Unwala, for the Appellant; Kodekar, Assistant Public Prosecutor for the Respondent No. 1 and Ms. Trusha K. Patel for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—In present petition under Sec. 482 of Criminal Procedure Code (hereinafter referred to as "the Code"), the petitioner has prayed that First Information Report ("F.I.R." for short) being C.R. No. I-5 of 2012 alleging offence under Secs. 406, 409, 420, 465, 467, 468, 471, 120B and 477A lodged with Gandhinagar Police Station, Economic Offence Cell, C.I.D. Crime may be quashed and attachment of Bank account may be lifted. The informant has alleged, inter alia, that the accused persons/petitioner have grabbed large parcel of land worth about Rs. 150 crore allotted to the members of housing co-operative society.

2. So far as the factual backdrop is concerned, it emerges from the record that one Mr. R.D. Joshi was allotted a plot being Plot No. A/71 in a housing co-operative society at Vadodara. The said plot was allotted in 1984 and since said Mr. Joshi ordinarily stays at Mumbai, he has executed a Power of Attorney in favour of the informant who has filed the impugned F.I.R. claiming that the F.I.R. is filed on behalf of the executor of the Power of Attorney. The said informant

(who is referred to as constituted attorney in present order) has alleged that from time to time the allottee paid the requisite amount claimed by the housing co-operative society towards membership (for five share certificates, development charges, towards price of land, etc. and accordingly, five share certificates No. 396 to 400 were issued by the society in name of the allottee. It is also alleged that according to the records of the society, an agreement for purpose of development was entered into with one M/s. Samir Builders Pvt. Ltd. According to the allegations in the F.I.R., upon payment of all charges, fees, etc., the said allottee became owner of the said Plot No. A/71. It is also alleged that from the details received in response to the application made under the provisions of Right to Information Act, it was revealed that the accused persons had created a bogus and forged letter allegedly issued by District Registrar of Co-operative Societies granting permission to sell the land of the housing co-operative society and on strength of such bogus/forged letter of permission, the accused No. 1, in connivance with other accused persons, sold the land in question (admeasuring about 4.25 lakh square metres) whereby the said allottee and other about 710 members of the co-operative society have been cheated and duped. It is also alleged that for the said purpose, the accused persons also forged letters of consent and letters of resignations by the members. It is also alleged that though the value of the land is more than about Rs. 150 crore, the land in question is allegedly sold-off at paltry price of Rs. 1,48,93,557/-. It is also alleged that though it is shown from the record that accused No. 1 sold away the land, actually it is the accused No. 2, i.e. present petitioner who, being daughter of accused No. 1, acted on behalf of accused No. 1. According to the F.I.R., somewhere in October, 2010, an advertisement inviting objections, if any, for the purpose of issuing title clearance certificate in favour of accused No. 1 who proposed to purchase the land in question was issued and at that time several members of the housing co-operative society lodged their objections and also issued counter-advertisement and filed complaints/applications before the District Registrar, Co-operative Societies. It is alleged that after receiving such complaints/applications from the members of the co-operative housing society, the Assistant District Registrar, Co-operative Societies initiated inquiry and in the report (which was submitted pursuant to the inquiry), several irregularities and financial misappropriation are reported which has adversely affected interest of the members of the housing co-operative society.

3. Mr. Nanavati, learned Senior Counsel has appeared with Mr. Unwala, learned Advocate for the petitioner and Ms. T.K. Patel, learned Advocate has appeared for the constituted attorney, i.e. respondent No. 2 and Mr. Kodekar, learned A.P.P. has appeared for respondent No. 1 State and respondent No. 3 Investigating Officer.

4. Mr. Nanavati, learned Senior Counsel has submitted, inter alia, that no role is alleged against the petitioner in the impugned F.I.R. He submitted that the petition is preferred only for accused No. 2. Learned Senior Counsel contended that any ingredient of the alleged offence is not made out against accused No. 2.

It is also submitted that the petitioner was nowhere in picture when allotment of land was made in 1984. It is also claimed that she is not party to the agreement with the developers, i.e. M/s. Samir Builders Pvt. Ltd. Learned Senior Counsel further submitted that the petitioner merely identified accused No. 1 (i.e. her father) at the time of execution of the documents, but she is not signatory to the document and she has not forged any signature or has not fabricated any document. Learned Senior Counsel also alleged that the impugned F.I.R. is filed maliciously and as arm-twisting method so as to bring about settlement in connection with another and separate dispute related to land situate at Rajkot. It is also claimed that on face of it the allegations in the impugned F.I.R. are in nature of civil dispute. Learned Senior Counsel also contended that any ingredient necessary to constitute offence under Secs. 406 or 420 or 465 to 468 or Secs. 120B and 471 are not made out. It is also alleged that the petitioner or the original allottee, i.e. executor of the Power of Attorney acquired only tenancy rights and he never acquired any ownership right in respect of the land in question. It is also contended that though the persons who allegedly executed the disputed documents may not have any authority in law to execute such documents but mere unauthorised execution of documents would not constitute alleged offence and when the said persons have put their own signatures, it cannot be said that they have forged any signature or fabricated any document. Learned Senior Counsel contended that the impugned F.I.R. deserves to be quashed at least qua accused No. 2 against whom specific allegations are not made. He clarified that limited and restricted relief qua only accused No. 2 is prayed for in the petition. Learned Senior Counsel relied on the decision in the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, and the decision in the case of Prakash Ramchandra Barot and Others Vs. State of Gujarat and Another, and the decision in the case of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, .

5. The petition and the submissions by the learned Senior Counsel for the petitioner are vehemently opposed by learned A.P.P. Learned A.P.P. submitted that on 16-8-2012 charge-sheet is already filed and that, therefore, the petitioner should now approach learned trial Court and file appropriate application but after submission/filing of charge-sheet, the petition does not deserve to be entertained.

5.1. It is also contended that though charge-sheet is filed further investigation under Sec. 173(8) is still in progress and various aspects connected with and arising from alleged offence are being investigated. It is also submitted that since further investigation is going on, the relief prayed for by the accused No. 2 does not deserve to be granted.

5.2. Learned A.P.P. also contended that in the charge-sheet, the details about the role allegedly played by accused No. 2 is mentioned and from the said details, it becomes clear that the petitioner is not justified in contending that any ingredient of alleged offence is not made out against the petitioner, i.e. accused

No. 2. Learned A.P.P. made reference of the statements recorded by I.O. to demonstrate that there is sufficient material to initiate and continue proceedings against accused No. 2. Learned A.P.P. submitted that resolutions of the society have been forged/fabricated and the resolutions have not been authorised by the annual general meeting of the members of the co-operative society. He also contended that the five persons who are shown as five Chairmen of the groups of the society were not even members of the housing co-operative society and thus were not entitled to be appointed/nominated as Chairman and yet without any authority but with aid of fabricated resolutions, the said persons were declared Chairmen and it is alleged that the said persons have signed the resolutions. Learned A.P.P. contended that it is the petitioner who purchased all stamp papers on which the disputed documents are executed and the petitioner appears to have signed the said documents as witness. It is also alleged that payment of Rs. 78/- lakh is shown to have been made but is not credited in the income account of co-operative society, and subsequently, Rs. 72 lakh has been withdrawn by the applicant by bearer cheque.

5.3. Learned A.P.P. emphasised that the District Registrar had not granted permission to sell the land in question but a document purporting to be permission by District Registrar was fabricated and his signature was forged, and that therefore, the petitioner's contention that any case for alleged offence of forgery is not made out, is unjustified. Learned A.P.P. relied on the decisions in the case of *Raj Kapoor and Others Vs. State and Others*, and in case of *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , *Dharmatma Singh Vs. Harminder Singh and Others*, and decision by this Court in case between *Jagatsinh N. Soda v. I.R. Mehta*, 2003 (3) GLR 1849.

5.4. Ms. Patel, learned Advocate for respondent No. 2 has also opposed the petition. She denied the petitioner's allegation that petition is filed as an arm-twisting method so as to bring about settlement with regard to the land situate at Rajkot. She adopted the contentions raised by learned A.P.P. and reiterated the factual details and contentions from the affidavit and additional affidavit filed by respondent No. 2. According to respondent No. 2, the accused persons have sold away about 4.25 lakh square metres land of housing co-operative society, and thereby, they have cheated members of the co-operative society. Learned Advocate for respondent No. 2 submitted that the F.I.R. is not filed merely for allegedly forged sale-deed and/or alleged forged agreement to sale but for allegedly forged resolution of the society and forged letter of permission allegedly issued and signed by District Registrar and allegedly forged resignations of members of society. Learned Advocate for respondent No. 2 referred to several documents purporting to be the letters/complaints made by persons claimed to be members of the housing co-operative society alleging, inter alia, that they have never resigned from the housing co-operative society as its members and the so-called letters of resignation allegedly given by them are forged and fabricated. Learned A.P.P. and learned Counsel for respondent No. 2 also made reference of the statement of the stamp vendor who has stated that accused No.

2 had purchased the stamp-papers and she had requested for anti-dated stamp paper.

5.5. In light of the material on record and the material gathered by I.O. and forming part of charge-sheet, it is submitted that there is enough and substantial material and details which make out case for continuing the proceedings. It is also submitted that even otherwise further investigation is going on and considering the said fact as well as the fact that the charge-sheet is filed, there is no justification to quash the F.I.R., as prayed for by the petitioner.

6. I have extensively heard learned Senior Counsel for the petitioner and learned A.P.P. and learned Advocate for respondent No. 2, during prolonged hearing on 9-1-2013 and 10-1-2013 and I have also considered the documents and material referred to by the learned Advocates and the material made available on record of the petition, including the F.I.R. and the counter of charge-sheet.

7. With the above-mentioned facts in backdrop the petitioner Corporation and/or the petitioner accused officer have preferred present petition under Sec. 482 of the Code which raises the question whether in view of such facts, and when the petitioners have remedy under the Code, these petitions under Sec. 482 of the Code should be entertained at this stage or the petitioners should approach learned trial Court with and by way of appropriate applications.

8. So as to consider the said issue it would be appropriate to refer to the observations by the Apex Court as regards the extent and limitations of powers under Sec. 482 and exercise of the said power for quashing the F.I.R. when investigation or further investigation is in progress and/or when charge-sheet is filed.

8.1. In Para 9 of the decision in the case between S.M. Datta v. State of Gujarat, 2001 (3) GLH 221 (SC), Hon''ble Apex Court observed that:

9.Criminal proceedings, in the normal course of events ought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events, thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the F.I.R. cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof.

8.2. The Hon''ble Apex Court has always put a word of caution with regard to any intervention or interference in the process of investigation. In this regard reference may be made to the observations of the Hon''ble Apex Court in Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another, which read thus:

30.In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation

that those committing offences either against an individual or the society are expeditiously brought to trial, and if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing the F.I.R. or complaint or restraining the competent authority from investigating the allegations contained in the F.I.R. or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the F.I.R. or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the F.I.R. or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the F.I.R. or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Sec. 482 Cr.P.C. (Emphasis supplied)

8.3. In the case between State of Andhra Pradesh Vs. Golconda Linga Swamy and Another, in Paragraph 8, the Hon'ble Apex Court observed as follows:

8. As noted above, the powers possessed by the High Court under Sec. 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. 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 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 under Sec. 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.....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 itself be the basis for quashing the proceeding.

(Emphasis supplied)

8.4. In the case between Dr. Monika Kumar v. State of U.P., AIR 2008 SC 2781, the Hon"ble Apex Court has observed, with regard to jurisdiction under Sec. 482, that:

31. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a Court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings. [See State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, ; Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ; State of Bihar v. J.A.C. Saldanah, 1980 (1) SCC 544; State of Orissa and Another Vs. Saroj Kumar Sahoo, . There may be some exceptions to the said rule, but we are not concerned with such a case.

(Emphasis supplied)

8.5. Similarly, in the decision in case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , the Hon"ble Apex Court observed that:

9. In R.P. Kapur Vs. The State of Punjab, , this Court summarised 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.

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 under Sec. 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 junction 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.

(Emphasis supplied)

8.6. Thus, the genuineness of allegation and/or quality and evidentiary value of evidence and other material on record or whether the evidence is reliable or not cannot be gone into, in petition under Sec. 482 of the Code, at threshold of investigation and/or proceedings in the Court. It is only sparingly and in cases where substantial and grave injustice is caused or when there is apparent abuse of process of law that inherent power can be exercised and not for scuttling or stifling legitimate investigation and/or prosecution at its threshold. The Court has also to keep in focus that merely because accused persons allege enmity or animosity on part of complainant the Court may not readily start to analyse such allegation, instead the material collected during investigation should be allowed to be examined by learned trial Court and the allegation of mala fides against the informant cannot, by itself, be made basis for quashing the proceedings. In a petition under Sec. 482 of the Code, this Court cannot examine and decide as to whether the allegation can be proved in light of available evidence and the Court is not supposed to embark upon the inquiry whether the allegations in the F.I.R. and the charge-sheet are reliable or not.

9. Now, the allegations and contentions by the petitioner and the respondent-State and respondent No. 2 may be considered in light of the above-quoted observations by the Hon'ble Apex Court.

10. It emerges from the record and rival submissions that in present case-

(a) that the so-called permission by the District Registrar is allegedly forged and fabricated;

(b) that the so-called letters of consent allegedly given by the members of the housing co-operative society are allegedly forged and fabricated;

(c) that the so-called letters of resignation as members of the society allegedly given by the several members of the housing co-operative society are also allegedly forged and fabricated;

(d) that the so-called resolutions allegedly passed by the General Body of the co-operative society are also allegedly forged and fabricated;

(e) the auditors who audited the accounts of the co-operative society have alleged misappropriation;

(f) that the charge-sheet has been filed and further investigation is still in progress.

(g) that the office-bearers and Chairman, who have allegedly moved/presented the resolution and which are alleged to have been passed by the society, were not duly elected or nominated as authorised office-bearers/Chairman in accordance with the applicable rules;

(h) the stamp vendor is said to have mentioned in his statement that the petitioner had approached him and asked for ante-dated stamp papers;

11. In face of the allegations that letters of consent and letters of resignation and resolutions allegedly passed by the society are forged and fabricated and even the so-called permission by the District Registrar is also forged and fabricated and allegedly large sum from the funds of society have been misappropriated and ante-dated stamp papers have been allegedly purchased and used, this Court, in present case, would not be justified in exercising powers under Sec. 482 and quashing the proceedings at its threshold before the learned trial Court can examine the said aspects in light of the material available on record e.g. there is any connection or co-relation between the complainant's action of submitting the F.I.R. and the dispute pending at Rajkot can be examined only after relevant evidence is placed on record, however, at this stage, it would not be proper for this Court to terminate and quash the proceedings and the F.I.R./charge-sheet merely on the basis of bald allegation by the petitioner-accused.

11.1. The details mentioned and allegations contained in the charge-sheet and the statements of various persons recorded by Investigating Officer of which both sides have placed reliance, prima facie bring out the details about the alleged role of the petitioner, however, the correct and entire facts can be examined only by the learned trial Court and the material which is placed by I.O. appears sufficient to satisfy the Court that a case to allow learned trial Court to proceed in the matter and examine for itself the material and to form its own opinion in accordance with law, is made out.

12. In this context, it is relevant to mention that the learned A.P.P. referred to and read out certain relevant portion from the statements recorded during investigation process (viz. S/Shri V.S. Solanki, N.A. Barot, D.N. Barot, L.H. Parmar, B.R. Bhatt, K.U. Gohil) so as to demonstrate that, prima facie, involvement of the petitioner herein in the alleged offence, emerges from the said statements and the role allegedly played by the petitioner.

12.1. It is submitted by learned A.P.P. that Mr. L.H. Parmar and Mr. B.R. Bhatt are the auditors who audited the accounts of the housing co-operative society and the said auditors have also made reference of the role allegedly played by the petitioner.

12.2. From the record, it appears that the Investigation Officer has recorded statement of stamp vendor and even in his statement, the petitioner's name is mentioned as the person who had contacted him and she had asked for/demanded ante/back-dated stamp papers, i.e. stamp papers purportedly sold on some previous date and that on her demand, he had supplied/sold such stamp papers to the accused No. 2. (on which the disputed documents are executed) and in many documents, the petitioner has signed the documents and its execution as witness.

12.3. It also prima facie appears that the District Registrar of Cooperative Societies had not granted statutorily required permission for sale/transfer of housing co-operative society's land, however, as part of the conspiracy hatched for grabbing the land of the housing co-operative society the petitioner and her father allegedly forged and fabricated the so-called letter of permission allegedly signed and granted by the District Registrar. Several members of the said society appear to have submitted complaints or given statements claiming that they had never given consent for sale/transfer of the plots allotted to them and the so-called consent letters in their names are forged and fabricated.

12.4. The learned A.P.P. and the learned Advocate for respondent No. 2 emphasised that the allegation about forgery and/or fabrication of the documents is not only with reference to the sale-deed and/or agreement to sale (Banakhat), but the said allegations are essentially with reference to the so-called permission allegedly granted by District Registrar, the so-called resolutions allegedly passed by the housing co-operative society and the so-called letters of resignation allegedly given by members of the said society. The auditors appear to have detected misappropriation of large amount which appear to have been siphoned away into the hands/accounts of the petitioner herein.

13. Learned Senior Counsel appearing for the petitioner meticulously referred to several documents and other material on record of present petition, including the documents of which reference has been made by learned A.P.P. and learned Advocate for respondent No. 2, so as to advance the submission that the entire case reflects only civil dispute. So far as the said contention is concerned, it prima facie appears from the statement by statutory auditors, members of the society, District Registrar, etc., that the material on record also demonstrates ingredients of criminal offence as well, and that therefore, it would not be just and proper at threshold of proceedings to terminate the case on the ground that case involves only civil dispute. So far as petitioner's allegation that the complaint has been lodged by the informant/constituted Attorney as an armtwisting method is concerned, it is appropriate to mention that said aspect is such which can be, and deserve to be determined by learned trial Court in light of the evidence which is, or may be, placed on record. It would not be just or prudent to interfere at this stage with the investigation or the proceedings before the Court and to terminate the investigation or the proceedings only on account of such allegation by the petitioner-accused. In this context it is appropriate to

mention that Hon''ble Apex Court has observed that it is the material collected during the investigation and the evidence led in the Court which decides such issues and mala fides against informant, cannot by itself, be the basis for quashing the proceedings. At this stage, it will be appropriate to also consider the observations by the Hon''ble Apex Court in the decision in case between State of Orissa and Another Vs. Saroj Kumar Sahoo, wherein, Hon''ble Apex Court observed that:

11.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. 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. (See: Dhanalakshmi Vs. R. Prasanna Kumar and Others, , Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill 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. Vs. O.P. Sharma, , Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, , State of U.P. Vs. O.P. Sharma, and Rajesh Bajaj Vs. State NCT of Delhi and Others, .

The learned trial Court would examine all these aspects in light of entire set of material on record.

14. In this context, it would be appropriate and relevant to also take into consideration, below-mentioned observations by the Hon''ble Apex Court in the decision in case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, :

12. The principles relating to exercise of jurisdiction under Sec. 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. 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 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.

(Emphasis supplied)

14.1. Subsequently, in the decision in case of Mohammed Ibrahim v. State of Bihar, 2010 (1) GLH 184 (SC), the Hon"ble Apex Court observed that:

8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See: G. Sagar Suri and Another Vs. State of U.P. and Others, and Indian Oil Corporation Vs. NEPC India Ltd. and Others, .

(Emphasis supplied)

14.2. In this context, reference may also be made of a decision in case between Lee Kun Hee and Others Vs. State of U.P. and Others, wherein the Hon"ble Apex Court has observed that in certain cases there can be civil liability coupled with criminal culpability. The relevant observation in the said decision reads thus:

26. We have given our thoughtful consideration to the last contention advanced at the hands of the learned Counsel for the appellants. We are of the considered view, that in offences of the nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating, can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief, for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1-2-2001, cannot be claimed in the criminal proceedings, for that relief the remedy would be only through a civil suit. It is, therefore, not possible for us to accept, that since a civil claim has been raised by the complainant-JCE Consultancy, based on the alleged breach of the agreement dated 1-12-2001, it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Indian Penal Code. It would not be appropriate for us, to delve into the culpability of the appellants at the present juncture, on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial Court. The only conclusion that needs to be drawn, at the present juncture is, that even on the basis of the last submission canvassed on behalf of the appellants, it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial Court. The trial Court shall, as it ought to, adjudicate upon the same in consonance with law, after allowing the rival parties to lead evidence to substantiate their respective positions.

(Emphasis supplied)

15. Thus, merely on the premise that the complaint relates to commercial transaction and/or involves civil dispute and/or civil remedy is available, the investigation or even proceedings cannot be terminated if the facts of the case bring out that criminal offence appears to have been committed and ingredients of alleged offence do exist.

15.1. A particular case may simultaneously involve civil dispute as well as criminal offence and ingredients and elements of criminal offence may co-exist with the allegations which may appear to be in nature of civil dispute. In such cases, the proceedings under Criminal Law can be maintained and may be continued.

16. From the material which is presently made available on record of present petition including the statements of which reference is made by learned A.P.P., it appears that there is sufficient material to allow the learned trial Court to independently examine the material and reach appropriate conclusion in accordance with law and provisions under the Code instead of examining the diverse aspects involved in the case, in this petition under Sec. 482 of the Code.

17. This Court, ordinarily, does not entertain petition under Sec. 482 for quashing the proceedings in cases where charge-sheet/s are filed and the petitioner has remedy available under the provisions of the Code.

17.1. Moreover, when other accused persons in some investigation process (though different oil companies) availed the remedy under the Code and preferred appropriate application and invited order (on which now the petitioners now rely) there is no strong and convincing reason in view of which these petitioners should not approach trial Court by taking out appropriate application, more so when charge-sheet is filed and there are several aspects and issues which deserve to be considered, examined and decided first by the learned trial Court in light of the material available on record of the case.

17.2. The Hon"ble Apex Court has also disapproved exercise of power under Sec. 482 of the Code when the accused persons have remedy under other provisions of the Code and when charge-sheet is filed.

17.3. This aspect viz. exercising power under Sec. 482 of the Code when other remedy is available under the provisions of the Code, was considered by the Hon"ble Apex Court as early as in 1980 in the decision in the matter between Raj Kapoor and Others Vs. State and Others, , wherein the Hon"ble Apex Court observed that:

Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code.

(Emphasis supplied)

17.4. Thereafter, the aspect was again considered by the Hon"ble Apex Court in the decision in case between Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, wherein the Hon"ble Apex Court observed that:

6. It may be noticed that Sec. 482 of the present Code is the ad verbatim copy of Sec. 561A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate Courts. It was under this Section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate Courts. Thus, the scope, ambit and range of Sec. 561A (which is now Sec. 482) is quite different from the powers conferred by the present Code under the provisions of Sec. 397. It may be that in some cases there may be overlapping, but such cases would be few and far between. It is well settled that the inherent powers under Sec. 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by

the Statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Secs. 482 and 397(2) of the present Code.

(Emphasis supplied)

17.5. Thus, the Hon''ble Apex Court clarified that the inherent power under Sec. 482 ought to be exercised in cases where grave and substantial injustice has been done and when any other remedy is not available to the litigant. The said aspect was emphasised by the Hon''ble Apex Court by further observing that the power ought not be exercised where a specific remedy is provided by the statute and that the power being an extraordinary one, it has to be exercised sparingly.

17.6. Thereafter, recently in 2011 also, in the decision in case of Dharmatma Singh Vs. Harminder Singh and Others, , Hon''ble Apex Court again observed that:

22. Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It has been held by this Court in R.P. Kapur Vs. The State of Punjab, that Sec. 561A of the Criminal Procedure Code, 1898 (which corresponds to Sec. 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code, and therefore, where the Magistrate has not applied his mind under Sec. 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider a request for quashing the proceedings.

23. In R.P. Kapur Vs. The State of Punjab,R.P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for inter alia the following reasons:

6In the present case, the Magistrate before whom the police report has been filed under Sec. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage...

24. As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Sec. 173, Cr.P.C., we are of the

considered opinion that the exercise of power by the High Court under Sec. 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case.

17.7. In case between Jagatsinh N. Soda v. I.R. Mehta, 2003 (3) GLR 1849, this Court has observed that:

It is well settled that inherent powers of the High Court are to be used sparingly, and only when there is no other provision in the Code for redressal of the grievance of the aggrieved person.

18. Thus, when charge-sheet is filed and when other and specific remedy is available to the petitioner, then this Court should refrain from exercising inherent power. For the said reason also, this petition does not deserve to be entertained by this Court at this stage.

18.1. In this view of the matter, this Court is of the opinion that when the petitioner has, as mentioned hereinabove earlier, remedy available under the provisions of the Code to make appropriate application before the learned trial Court which can be examined and decided by the learned trial Court in light of and after examining the material placed before the Court along with the charge-sheet, the petitioner should prefer appropriate application under the provisions of the Code before the learned trial Court and at this stage this Court need not entertain present petition. Moreover, when charge-sheet is filed and on the other hand investigation is still continued and when there are allegations about conspiracy (Sec. 120B), it will not be proper or just to terminate the investigation and/or to quash the entire proceedings at this stage.

19. The entire material which is gathered as a result of investigation process until now and the charge-sheet which depicts the alleged involvement of and role allegedly played by the petitioner, is before the learned trial Court, and that therefore, the learned trial Court would be able to examine the entire material and pass appropriate order, if and when appropriate application was taken out by the present petitioner.

19.1. Since, the Court is not inclined to entertain present petition in view of the fact that the petitioner has remedy to take out appropriate application under provisions of the Code, it would not be proper or justified for this Court to offer any comment or make any observation with regard to the nature, effect or contents of the documents and other material.

19.2. It would be for the learned trial Court to independently examine the material and to reach its own independent and appropriate conclusion and the Court would refrain from making any observation on this count.

20. In view of the facts and circumstances of the case, I am neither inclined nor convinced to exercise powers under Sec. 482 of the Code so as to quash the proceedings even qua the petitioner at this stage, i.e. before the learned trial Court examines various relevant aspects including role allegedly played by the

petitioner, in light of the material available on record.

20.1. As an upshot of the foregoing discussion and for the above-mentioned reasons, there is no justification to entertain the petition and exercise powers under Sec. 482 of the Code and the petition does not deserve to be entertained. Hence, the petition is not accepted.

20.2. It is, however, clarified that the observations made in present order are only prima facie observations and they do not reflect any final view of this Court on merits of the case and the observations are made only for the purpose of present order. If and when application is taken out by the petitioner, then such application may be independently examined by the learned trial Court in accordance with law and provisions under the Code. Accordingly, the petition fails at this stage and is not entertained. The petition stands rejected. Notice discharged.