

(2014) 04 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Cri. M.M.O. No. 6 of 2014

Himachal Pradesh Cricket Association	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 151, 155(2), 156(1), 173, 173(2)
Penal Code, 1860 (IPC) — Section 120B, 406, 420
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2014) CriLJ 4294

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.

Bench : Single Bench

Advocate : P.S. Patwalia, Sr. Counsel, Abhinav Mukerji, Parshotam Chaudhry and Vikrant Thakur, Advocate for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, V.S. Chauhan, Addl. Advocate General and Kush Sharma, Deputy Advocate General, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. By the medium of this petition, the petitioners have invoked the jurisdiction of this Court in terms of Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") for quashing FIR No. 12 of 2013, dated 1st August, 2013, registered at Police Station Dharamshala, under Sections 406, 420, 120B of the Indian Penal Code (hereinafter referred to as "IPC") and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act"), on the grounds taken in the memo of petition. This petition came up for consideration before one of the Co-ordinate Benches of this Court on 7th January, 2014 and was deferred with the observation that the case be listed before another Bench subject to the orders of the Chief Justice. Thereafter, the petition came up for consideration before another Bench on 9th January, 2014 and was adjourned with liberty to make a mention before the learned Vacation Judge. On 24th January, 2014, the learned Vacation Judge asked the petitioners

to seek appropriate orders from the Chief Justice qua listing being the pending matter. It appears that this order was questioned by the petitioners before the Apex Court and the Apex Court, after hearing the parties, passed the following order:

"The substance of the matters is that an application filed by the petitioners herein under Section 482, Cr.P.C. could not be heard by the High Court of Himachal Pradesh for various reasons including that two of the Hon"ble Judges declined to hear the matter. Therefore, there is a prayer in T.P. (CrI.) No. 42 of 2014 to transfer the Cr. MMO No. 6/2014 titled as "Himachal Pradesh Cricket Association & Anr. v. State of Himachal Pradesh before the High Court of Himachal Pradesh.

After hearing learned counsel for the parties, we deem it appropriate to request the Hon"ble Chief Justice of the High Court of Himachal Pradesh to take up the Cr. MMO No. 6/2014 himself and dispose of the same expeditiously.

The parties are at liberty to mention the matter before the Hon"ble the Chief Justice of the High Court. In view of the above observations, the special leave petition and transfer petition stands disposed of.

In view of the disposal of the special leave petition and transfer petition, no order is required to be passed by this court in I.A. No. 3971/2014 in T.P. (CrI.) No. 42 of 2014 and CrI. MP No. 3937/2014 in SLP (CrI.) No. 963/2014".

2. In terms of the orders of the Apex Court, after hearing the parties, I was asked to hear the petition and no relief was granted in miscellaneous petitions. The matter came up before this Court on 4th March, 2014, the matter was partly heard with a direction to the respondents to file latest status of investigation, which was filed by the learned Advocate General. The matter was heard on 7th April, 2014, and was reserved for judgment.

3. The petitioners have questioned the lodging of FIR on the following grounds:

1. That it is purely a civil dispute outcome of civil liability and civil suit is pending in this Court.

2. That the petitioners have not violated any law, the leases were executed by the State in favour of the petitioners and the State is still the owner. And if the petitioners have acted in violation of the terms and conditions of the lease, that may be ground for cancellation of the lease(s) and not for lodging an FIR subjecting the petitioners and other persons to investigation and to face criminal trial.

3. That no mens rea is involved, thus, no criminal case is made out.

4. That the Cricket Association was "a not for profit society" and was not converted into company with ulterior motives. Thus, the question of wrongful loss or wrongful gain does not arise at all.

5. That the entire case is politically motivated, based on Congress charge-sheet, the investigation is monitored by the Chief Minister-respondent No. 2 and Special Investigation Team has been asked to submit the report to the Chief Minister-respondent No. 2, thereby the lodging of the FIR and conducting of investigation at the behest of the Chief Minister-respondent No. 2 is based on mala fides.

6. That the entire exercise is just to take over the control of the Cricket Association."

4. Learned counsel for the petitioners, while addressing arguments, also argued that the persons allegedly to be involved in the commission of offences are private persons, thus, provisions of PC Act are not applicable, is just to harass the petitioners. He further submitted that the Congress President has publicly asked petitioner No. 2-Anurag Thakur to mend himself and resultantly all the cases will be withdrawn, including the FIR in hand. The civil proceedings are already pending before this Court and the same subject matter is under investigation. This Court has already granted status quo ante, which is in force, as on today. Respondent No. 2 has also filed a civil suit for Damages against petitioner No. 2 and other persons, which is also pending before a Civil Court.

5. Learned counsel for the petitioners further argued that respondent No. 2 had visited the premises of petitioner No. 1 and had made an entry in the visitors' book with a word of appreciation. All the documents have been prepared as per the rules and regulations occupying the field. No demand certificates have been issued by the competent Authorities. The petitioners have complied with all the terms and conditions applicable and have not committed any breach. The first lease, second lease and even the supplement lease were made after due approval of the Competent Authority. The case, i.e. FIR, is outcome of political vendetta and prayed that the FIR be quashed.

6. Learned counsel for the petitioners also argued that no notice has been issued so far and the stand of the respondents is not known. He has prayed that notice be issued and respondents be asked to file reply enabling the petitioners to meet out the defence of the respondents and further prayed that till reply is filed, investigation be stayed.

7. While spelling out his arguments, learned counsel for the petitioners, has relied upon the various judgments including State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; Union of India (UOI) and Others Vs. Sushil Kumar Modi and Others, ; National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) and Others, ; Dalco Engineering Private Ltd. Vs. Shree Satish Prabhakar Padhye and Others, ; Commissioner of Income Tax Vs. Rita Mechanical Works and GHCL Employees Stock Option Trust Vs. India Infoline Ltd., .

8. Learned Advocate General, while rebutting the arguments, argued that the FIR was lodged, which was made in terms of a complaint and the investigating agency, while conducting the investigation, came to the conclusion that eighteen persons are, prima facie, found to have been involved in the commission of

offences punishable under various provisions of IPC and PC Act.

9. Learned Advocate General, while advancing arguments, has argued that all the documents, No Objection Certificates and other certificates were obtained fraudulently and with a criminal intention. Further argued that conversion of the said society to a company is with ulterior motives just to cause wrongful gain to the petitioners and wrongful loss to the State. Even the land has been acquired fraudulently, by deception and illegal means and thus, the accused have committed criminal breach of trust. Further argued that they are not only involved in the commission of offence punishable under Sections 406, IPC, i.e. criminal breach of trust and misappropriation, but are also involved in cheating and commission of other offences because they have obtained documents by deceitful means and managed lease deeds and other documents fraudulently.

10. Learned Advocate General further argued that a false affidavit was tendered to obtain a completion certificate of the Club House and the other constructions. The officers of Municipal Committee and other officers have misused their official position. The officers, whose names have figured in investigation, have prepared false reports by misusing their official position in order to cause wrongful loss to the Government and wrongful gain to the petitioners and other accused.

11. Respondents have submitted a status report in terms of the court directions, which contains details of the investigation conducted. It contains the allegations how the officers are involved, how petitioner No. 2 and other persons played their illegal acts and activities, managed the documents and other certificates. It is also stated in the status report that Shri R.S. Gupta, the then Deputy Commissioner, has categorically prepared a report ignoring the report of Divisional Forest Officer, who had assessed value of the trees as 50 lacs at that point of time, thereby causing wrongful loss to the Government and wrongful gain to Himachal Pradesh Cricket Association.

12. The report further discloses that Shri Deepak Shanan, the then Revenue Secretary, provided a helping hand to the alleged accused for granting permission to set up and run a commercial hotel and the matter was not taken to the Cabinet, which was in violation of Schedule 20 of the Himachal Pradesh Rules of Business. The report also contains how Himachal Pradesh Cricket Association Society was merged into a company just to prevent the State Government from controlling it.

13. The conspiracy was hatched not only by petitioner No. 2, Anurag Thakur and other persons, but also in connivance with officers/officials of various departments, who are also figuring as co-accused in the said police report in terms of Section 173, Cr.P.C..

14. Before I will thrash and marshal out all points raised in the petition and the arguments advanced by the learned counsel for the parties, I deem it proper to give a flashback wherefrom the powers under Section 482, Cr PC have originated.

15. This remedy was available even before Section 561A of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") was enacted (corresponding to Section 482, Cr.P.C.). In fact, this Section has not given any new powers to the High Court. This is an inherent power, which is exercised by the High Court very rarely, sparingly and in rarest of rare cases with due care and caution.

16. It is apt to reproduce Section 482, Cr.P.C. herein:

"482. Saving of inherent power of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".

17. While going through the said provision of law, it is crystal clear that the jurisdiction is very wide and its scope is very wide also, but as a rule of practice, it is to be exercised rarely, sparingly, with due care and caution and in rarest of rare cases.

18. The tests have been laid down for invoking this jurisdiction under Section 482, Cr.P.C. by the Apex Court, Privy Council and other High Courts. While looking the development of law in relation to the exercise of inherent powers of the Court, it is profitable to refer to the judgment of the Bombay High Court reported in *In Re: Llewelyn Evans*, wherein it was held that the "inherent jurisdiction" can be exercised just "to prevent abuse of process of law" and "to secure the ends of justice".

19. While interpreting "inherent jurisdiction", "to prevent abuse of process of law" and "to secure the ends of justice", it means that the Court has to examine the case and make a balance between the prosecution and the defence, but it is to be discussed in such a way that it should not amount to appreciation of evidence and other details at its infancy stage.

20. The Chief Court of Oudh at Lucknow in the case of *S.C. Mitra v. Raja Kali Charan and others*, reported in 1928 (3) ILR (Lucknow) 287, held that the limits of the jurisdiction are very wide indeed as the language employed by the Legislature in enacting sections 439 and 561A of the old Code shows; but though the jurisdiction exists and is wide in its scope, it is a rule of practice that it will only be exercised in exceptional cases.

21. It is profitable to reproduce the tests laid down in the case of *Hakim Abdul Wali v. King Emperor*, reported in 1934 (9) ILR (Lucknow) 61, herein:

"Ordinarily the High Court will not interfere at an interlocutory stage of criminal proceedings in a subordinate court but the High Court is under an imperative obligation to interfere in order to prevent the harassment of a subject of the Crown by an illegal prosecution. It would also interfere whenever there is any exceptional and extraordinary reason for doing so. One of the tests to apply in

order to determine whether any particular case is of that exceptional nature or not is to see whether a bare statement of the facts of the case should be sufficient to convince the High court that it is a fit case for its interference at an intermediate stage. Another test to be applied is to see whether in the admitted circumstances of the case it would be a mock trial if the case is allowed to proceed. Broadly speaking the High Court will generally interfere in the interests of justice and to stop abuse of process of law".

22. The Privy Council in a case titled as AIR 1945 18 (Privy Council), held as under:

".....It has sometimes been thought that S. 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation".

23. The Allahabad High Court in a case titled Ram Narain v. Mool Chand and others, reported in AIR (47) 1960 Allahabad 296 : (AIR 1960 All 552), held that in order to seek interference under S. 561A of the old Code, three conditions should be fulfilled : (1) the injustice which comes to light should be of a grave character and not of a trivial character; (2) the injustice which is noted is of a clear and palpable character and not of a doubtful character; and (3) there exists no other provision of law by which the party aggrieved could have sought relief.

24. The Apex Court in the case of R.P. Kapur Vs. The State of Punjab, of the judgment, held as under:

"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the police report has been filed under S. 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. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise 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. In such case it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category 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 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 under S. 561A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That 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. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re: Shripad G. Chandavarkar, , Dr. Shankar Singh Ganda Singh Vs. State of Punjab, , Nripendra Bhusan Ray Vs. Gobinda Bandhu Majumdar, and Ramanathan Chettiyar Vs. K. Sivarama Subrahmanya Ayyar, ").

25. The Apex Court in the case titled as The State of Uttar Pradesh Vs. Mohammad Naim, , held that the High Court can in the exercise of its inherent

jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only. The Allahabad High Court in the case of Ganga Prasad Vs. State and Another, , laid down the same principle.

26. The star case dealing with the issue in hand is State of Haryana and others Vs. Ch. Bhajan Lal and others, . It is apt to reproduce paras 102 and 103 of the judgment herein:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the 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 under Section 155(2) of the Code.
5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

27. The Apex Court, in the case of Baijnath Jha Vs. Sita Ram and Another, , held as under:

"5. 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 Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The 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. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some de(sic) 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 the rarest of rare cases....."

28. The latest judgment in point of time covering the issue is Amit Kapoor Vs. Ramesh Chander and Another, . In this judgment, the Apex Court has laid down sixteen tests contained in paras 27.1 to 27.16. It is apt to reproduce relevant portion of the judgment herein:

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be

exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence,

merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref. State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, ; Janata Dal Vs. H.S. Chowdhary and Others, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; G. Sagar Suri and Another Vs. State of U.P. and Others, ; Ajay Mitra Vs. State of M.P. and Others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; State of U.P. Vs. O.P. Sharma, ; Ganesh Narayan Hegde Vs. S. Bangarappa and Others, ; Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ; M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, ; Shakson Belthissor Vs. State of Kerala and Another, ; V.V.S. Rama Sharma and Others Vs. State of U.P. and Others, ; Chunduru Siva Ram Krishna and Another Vs. Peddi Ravindra Babu and Another, ; Sheonandan Paswan Vs. State of Bihar and Others, ; State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; Lalmuni Devi Vs. State of Bihar and Others, ; M. Krishnan Vs. Vijay Singh and Another, ; Savita Vs. State of Rajasthan and Others, ; and S.M. Datta Vs. State of Gujarat and Another, .

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the

proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."

29. The Apex Court in the cases titled as Surya Baksh Singh Vs. State of Uttar Pradesh, , and Umesh Kumar Vs. State of Andhra Pradesh, , has discussed the scope of Section 482, Cr.P.C.. It is apt to reproduce para 13 of the judgment in Surya Baksh Singh's case (supra) herein:

"13. It is at once obvious that whereas Section 482 of the Cr.P.C. is available only to the High Courts, Section 151 can be resorted to at any stage of civil judicial proceedings in any of the hierarchical tiers. Secondly, the use of the word "otherwise" in Section 482 has the avowed effect of boundlessly broadening the boundaries of inherent powers of the High Court in exercise of its criminal jurisdiction. Thirdly, Section 482 can be employed to ensure obedience of any order passed by the Court because of the phrase "to give effect to any order under this Code". State of Karnataka Vs. L. Muniswamy and Others, enunciates that in exercise of its inherent powers in criminal matters "the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.....The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the Legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction". A Three Judge Bench clarified in Krishnan and another Vs. Krishnaveni and another, that although a second Revision before the High Court after dismissal of the first one by the Court of Sessions is barred by Section 397(3), the inherent powers of the High Court under Section 482 are nevertheless available albeit with restraint so as to avoid needless multiplicity of the proceedings. This Court had opined that "when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities.....The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and it is preserved by the Court". Raj Kapoor and Others Vs. State and Others, considered the question whether the inherent power of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. The view was that--"Section 482 contradicts this contention because nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. 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". In *State of Punjab Vs. Kasturi Lal and Others*, , after cautioning against reckless use of Section 482 this Court has observed - "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 exists. Authority of the Courts exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of 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". Advanced Law Lexicon by P. Ramanatha Aiyar defines Justice as - "The exercise of authority or power in maintenance of right; vindication of right by assignment of reward or punishment; the administration of law or the form and processes attending it; the principle of just dealing".

30. The Apex Court has laid down the various tests as discussed hereinabove. While applying the tests to the instant case, the question to be determined is-- whether the petitioners have carved out a case for interference? The answer is in negative for the following reasons:

31. Learned counsel for the petitioners argued that it is a civil liability. The Apex Court in a catena of cases has held that if a civil remedy is also available or if a case emanates out of civil liability, that cannot be ground to throw out a criminal case during investigation or before it has come up for trial.

32. The Apex Court in the case of *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, , laid down the same proposition. It is apt to reproduce paras 7, 8 and 9 of the judgment herein:

"7. Time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions (vide *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and *Rajesh Bajaj Vs. State NCT of Delhi and Others*, .

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations (SCC p. 263, para 10):

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."

8. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Preemption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, ."

33. It will also be profitable to reproduce relevant portion of the judgment rendered by the Apex Court in the case of *Amit Kapoor Vs. Ramesh Chander and Another*, , herein:

"26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, , this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending."

34. The Apex Court in the case of *Vijayander Kumar and Others Vs. State of Rajasthan and Another*, , held that only because a civil remedy is available, cannot be a ground to quash criminal proceedings. It is apt to reproduce paras 10 and 12 of the judgment herein:

"10. Contra the submission advanced on behalf of the appellants, the learned counsel for Respondent No. 2 has submitted that there is no merit in the contention advanced on behalf of the appellants that the FIR discloses only a civil case or that there is no allegation or averment making out a criminal offence. For that purpose he relied upon the judgment of the High Court rendered in the facts of this very case in *Vijayander Kumar and Others Vs. State of Rajasthan and Another*, , already noted earlier.

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12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only

because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd., ."

35. It is projected that it is a case of vengeance, political vendetta and mala fide. Learned counsel for the petitioners also argued that all the documents annexed with the petition do disclose that the alleged accused are not involved in the commission of offences, but it is outcome of vengeance and the documents annexed with the petition have not been considered by the investigating agency, thus, no case for criminal trial is made out. This argument advanced by the learned counsel for the petitioners is devoid of any force for the reason that the FIR was lodged and investigation has been conducted. In terms of the status report filed, investigation has been concluded and the material collected do disclose that eighteen persons are, prima facie, involved in the commission of offences, who have been arrayed as accused.

36. The Apex Court in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , held that the allegations of mala fide based on the facts after the lodging of the FIR are of no consequence and cannot be the basis for quashing the proceedings. It is apt to reproduce para 23 of the judgment herein:

"23. The informant, being in a peculiar position having lodged the accusation is bound to be looked down upon by the accused-persons. The allegations of mala fide, therefore, against the informant based on the facts after the lodging of the FIR are of no consequence and cannot be the basis for quashing the proceedings. As regards the investigating officer, he has wide powers under the Criminal Procedure Code. He has to perform his duties with the sole object of Investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused. Simply because the investigating officer, while acting bona fide, rules out certain documents as irrelevant, it is no ground to assume that he acted mala fide. The police report submitted by the investigating officer has to pass through the judicial scrutiny of a Magistrate, at the stage of taking cognisance. Although the accused person has no right to be heard at that stage but in case the accused person has any grouse against the investigating officer or with the method of investigation he can bring to the notice of the Magistrate his grievances which can be looked into by the Magistrate. When the police report under S. 173, Cr.P.C. has to go through the judicial scrutiny it is not open to the High Court to find fault with the same on the ground that certain documents were not taken into consideration by the investigating officer. We do not, therefore, agree with the High Court that the FIR and the investigation is vitiated because of the mala fide on the part of the informant and the investigating officer. We may, however, notice the factual matrix on the basis of which the High

Court has reached the findings of mala fide against the informant and the investigating officer....."

37. The Apex Court in a recent judgment in the case of Umesh Kumar Vs. State of Andhra Pradesh, , held that the proceedings should not be quashed only on the ground that same were initiated with mala fides to wreak vengeance or to achieve ulterior goal.

38. Thus, the argument of mala fide is of no help, though the file does not disclose at this stage how it is a case of mala fide.

39. The State has filed objections to CMP No. 320 of 2014 and has stated that the investigation is complete, all necessary formalities have been completed, the competent Authority has granted sanction and only final report in terms of Section 173(2), Cr.P.C. has to be presented before the Court of competent jurisdiction. The investigating agency has come to the conclusion that so far eighteen persons are involved in the commission of offences and is a fit case for trial.

40. The Apex Court in the case of Dharmatma Singh Vs. Harinder Singh and Others, , while dealing with Section 173, Cr.P.C., held as under:--

"9. A reading of provisions of sub-section (2) of Section 173, Cr.P.C. would show that as soon as the investigation is completed, the officer in charge of the police station is required to forward the police report to the Magistrate empowered to take cognizance of the offence stating inter alia whether an offence appears to have been committed and if so, by whom. Sub-section (8) of Section 173 further provides that where upon further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall also forward to the Magistrate a further report regarding such evidence and the provisions of sub-section (2) of Section 173, Cr.P.C., shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2). Thus, the report under sub-section (2) of Section 173 after the initial investigation as well as the further report under sub-section (8) of Section 173 after further investigation constitute "police report" and have to be forwarded to the Magistrate empowered to take cognizance of the offence. It will also be clear from Section 190(b) of the Cr.P.C. that it is the Magistrate, who has the power to take cognizance of any offence upon a "police report" of such facts which constitute an offence. Thus, when a police report is forwarded to the Magistrate either under sub-section (2) or under sub-section (8) of Section 173, Cr.P.C., it is for the Magistrate to apply his mind to the police report and take a view whether to take cognizance of an offence or not to take cognizance of offence against an accused person.

41. The Apex Court in the case of Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners P. Ltd., , held that while entertaining petition under Section 482, materials furnished by defence cannot be looked into and can be entertained only at the relevant point of time during the trial. It is apt

to reproduce para 18 of the judgment herein:

"18. While entertaining a petition under Section 482, Cr.P.C., the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases."

42. In *Vijayander Kumar and Others Vs. State of Rajasthan and Another*, , the Apex Court held that at the infancy stage, the material relied by the alleged accused cannot be gone through and is to be considered during trial at the appropriate stage. It is profitable to reproduce para 11 of the judgment herein:

"11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage."

43. In the case of *State of Andhra Pradesh Vs. Golconda Linga Swamy and Another*, , the Apex Court has held that whether the material collected would be sufficient for framing the charge of an offence is domain of the trial Court and whether such material is sufficient to hold them guilty or otherwise, is to be considered by the trial Court at the appropriate stage.

44. The case is to be tested at this stage on the facts disclosed in the FIR and final report of the investigating agency.

45. The Apex Court has provided that this power is to be exercised, as discussed hereinabove, carefully, cautiously and in rarest of rare cases, while keeping in view the tests laid down right from the year 1926 till today.

46. It is apt to reproduce para 7 of the judgment rendered by the Apex Court in the case of *Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another*, :

"7. Exercise of power under Section 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 aliquid alicui concedit, concedere videtur et id sine quo res ipsae case non potest*" (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."

47. The Apex Court in the cases titled as *State of Orissa and Another Vs. Saroj Kumar Sahoo*, , and *Som Mittal Vs. Govt. of Karnataka*, , held that the inherent power of the High Court should not be exercised according to the whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases. It is apt to reproduce paras 10 and 19 of the judgment in *Som Mittal*'s case (*supra*) herein:

"10. In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when *prima facie* it appears to Court

that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

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19. We may observe here that despite this Court's consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold."

48. The Apex Court in the cases titled as *Som Mittal Vs. Government of Karnataka*, ; *K.L.E. Society and Others Vs. Siddalingesh*, ; *Reshma Bano Vs. State of Uttar Pradesh and Others*, and *Pankaj Kumar Vs. State of Maharashtra and Others*, , held that the power under Section 482, Cr.P.C. to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear cut case for quashing is made out and failure to interfere would lead to a miscarriage of justice. It is apt to reproduce para 10 of the judgment in *Pankaj Kumar's* case (supra) herein:

"10. The scope and ambit of powers of the High Court under Section 482, Cr.P.C. or Article 227 of the Constitution has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, we consider it unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provisions are very wide but these should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. [See: *Janata Dal Vs. H.S. Chowdhary and Others*, *Kurukshetra University and Another Vs. State of Haryana and Another*, and *State of Haryana and others Vs. Ch. Bhajan Lal and others*, ".

49. The Apex Court in the cases of State of Maharashtra and Others Vs. Arun Gulab Gawali and Others, ; Santosh Kumari Vs. State of Jammu & Kashmir and Others, ; Union of India (UOI) and Others Vs. Ramesh Gandhi, ; State of Madhya Pradesh Vs. Surendra Kori, , and Gian Singh Vs. State of Punjab and Another, , held that Section 482, Cr.P.C. saves the inherent power of the High Court which it has by virtue of it being a superior Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is profitable to reproduce para 14 of the judgment in Surendra Kori's case (supra) herein:

"14. The High Court in exercise of its powers under Section 482, Cr.P.C. does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482, Cr.P.C., though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482, Cr.P.C., 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 wide magnitude and cannot be seen in their true perspective without sufficient material."

50. The Apex Court in a catena of judgments has asked the courts to avoid appreciation of evidence, even in summary manner, of pleadings and the averments contained in the FIR.

51. The Apex Court in the cases titled as Union of India and others Vs. B.R. Bajaj and others, ; Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another, and its latest judgment rendered in Bhaskar Lal Sharma and Another Vs. Monica and Others, , held that the appreciation of averments made in a complaint or FIR is not permissible even in a summary manner at the stage of quashment of criminal proceeding. It is apt to reproduce para 11 of the judgment in Bhaskar Lal Sharma's case (supra) herein:

"11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

52. I have had the occasion to deal with this issue as Judge of the High Court of Jammu and Kashmir at Srinagar in a series of cases including the case titled Mian Abdul Qayoom Vs. State and Others, , which was a serious and sensitive matter, wherein I have discussed how this power can be exercised. In that case, the challan was almost ready to be filed and the Bar President, who was named as

accused in the said case, filed a petition under Section 561A of the old Code (corresponding to Section 482, Cr.P.C), after discussing all the tests and several facts and circumstances of that case, it was held that no case for interference was made out.

53. In another case titled as Kulbhushan Nahar and Others Vs. C.B.I. and Others, , the argument was advanced that the FIR is outcome of the ulterior motives and mala fides in order to ensure that the accused is lodged in jail, his reputation is at stake and this was completely turned down on the ground that the FIR on the face value was disclosing the commission of offences and material was collected during investigation and was a matter to be gone through by the competent court/trial Court.

54. Learned counsel for the petitioners has also argued that petitioner No. 2 Anurag Thakur and other persons, allegedly involved in the commission of offences, are not public servants, so the provisions of PC Act cannot be invoked.

55. This argument is misconceived for the simple reason that eighteen persons have been arrayed as accused and some of them are public servants. It is alleged that all of them have hatched the conspiracy and caused wrongful gain to the petitioners and wrongful loss to the State. It is also alleged that they have misused their official positions in order to shower benefits and to show favour to the other accused.

56. The petition has been filed on behalf of the Himachal Pradesh Cricket Association through Shri Surinder Singh Thakur and by Shri Anurag Thakur. Shri Anurag Thakur has not sworn any affidavit qua the averments made in the petition. It is, thus, a moot question whether this petition is maintainable as such? I deem it proper to leave this question open.

57. The remedy under Section 482, Cr.P.C., i.e. invoking the inherent jurisdiction, should not be used as a device to frustrate the investigation or trial.

58. It is apt to reproduce relevant portion of para 12 of the judgment of the Apex Court in the case of State of Maharashtra and Others Vs. Arun Gulab Gawali and Others, herein:

"12. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal

Procedure. 1973 (hereinafter called as "Cr. PC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers."

59. Lodging of FIR, conducting the investigation and preparation of charge-sheet in terms of Section 173, Cr.P.C. has to undergo scrutiny of judiciary at various stages and is yet a still born child. The remedy provided by Section 482, Cr.P.C. cannot be used to scuttle away the proceedings en route before the cognizance is drawn and process is issued by the committal Court/trial Court and to make an effort to kill a still born child.

60. It is apt to reproduce relevant portion of para 68 of the judgment of the Apex Court in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , herein:--

"Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still born child. Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pretrial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained.....The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the charge-sheets and the First Information Report."

(Emphasis added)

61. The same view has been taken by the Apex Court in a latest judgment in a case titled Umesh Kumar Vs. State of Andhra Pradesh, .

62. Learned Advocate General has vehemently argued that it has come in the FIR and the final report in terms of Section 173(2) Cr.P.C. that the documents have been managed fraudulently and by misuse of the powers, the said fact can be proved when opportunity is given to the prosecution to prove the same and cannot be gone through at this stage, appears to be plausible and has a force in view of the judgment of the Apex Court in the case of State of Madhya Pradesh Vs. Surendra Kori, . It is profitable to reproduce para 24 of the judgment herein: "24. We are of the considered opinion that in view of the magnitude of the crime, the number of documents alleged to have been executed fraudulently, the reports referred to in the charge-sheets and the involvement of the respondent, etc. could be decided only if an opportunity is given to the prosecution. The High

Court, in such circumstances, was not justified in quashing all the first information reports and the charge-sheets in exercise of its powers under Section 482, Cr.P.C.."

Having said so, no case for interference is made out at this stage and the petition merits to be dismissed along with all CMPs. Dismissed as such.