

(2024) 03 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 31132 Of 2024

Lokendra Singh And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 11-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Indian Penal Code, 1860 — Section 34, 109, 294, 323, 324, 506

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2) (va)

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2024) 03 MP CK 0009

Hon'ble Judges : Pranay Verma, J

Bench : Single Bench

Advocate : Rishiraj Trivedi, A. S. Parihar

Judgement

Pranay Verma, J

1. This petition under Article 226 of the Constitution of India has been preferred by the petitioners / accused seeking quashment of FIR No.97/2023 registered at Police Station, Piploda, District Ratlam for offences punishable under Sections 294, 324, 323, 506, 109 and 34 of the IPC and Sections 3(2) (va), 3(1)(r) and 3(1)(s) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. A preliminary objection has been raised by learned counsel for the respondents / State as regards maintainability of this petition submitting that for seeking reliefs as claimed for by petitioners in this petition a writ petition under Article 226 of the Constitution of India would not be maintainable and only a petition under Section 482 of the Cr.P.C. would be maintainable. Reliance has been placed on the decision of this Court in W.P. No.7197/2022 (Lajjaram Jatav and Others Vs. State of M.P. and Others) decided on 16.12.2022, Preeti Gupta and Another Vs. State of Jharkhand and Another, 2010 (7) SCC 667, Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another, 2012 (10) SCC

741 and K. Subba Rao and Others Vs. State of Telangana and Others, 2018 (14) SCC 452.

3. Per contra, learned counsel for the petitioners has submitted that for quashment of FIR as sought for by petitioners a writ petition under Article 226 of the Constitution of India is very much maintainable and it cannot be held that for the same only a petition under Section 482 of the Cr.P.C. would be maintainable in view of which the objection as raised by respondents is misconceived. Reliance has been placed on the decisions of the Supreme Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others (1998) 5 SCC 749, Kapil Agrawal and Others Vs. Sanjay Sharma and Others (2021) 5 SCC 524, Govind Vs. State (Government of NCT, Delhi) and Others 2003 (68) DRJ 446 (DB), Asmathunnisa Vs. State of A.P. (2011) 11 SCC 259, Nirbhay Singh Rajput Vs. State of M.P. (2010) 1 MPLJ 207, Ramkishan Dhakad and Others Vs. State of M.P. and Others, M.Cr.C. No.2300/2021 decided on 25.02.2021, Khuman Singh Vs. State of M.P., AIR 2019 SC 4030, Hitesh Verma Vs. State of Uttarakhand and Another (2020) 10 SCC 710 and Ajay Pattanaik @ Ajaya Kumar Pattanayak and Another Vs. State of Odisha and Another, CRLMC No.2636/2021 decided on 01.03.2023.

4. I have considered the submissions of learned counsel for the parties and have perused the judgments relied upon by them.

5. In Kapil Agrawal and Others (supra), it has been held that for preventing abuse of process of law, the FIR can be quashed in exercise of powers under Article 226 of the Constitution of India or in exercise of powers under Section 482 of the Cr.P.C. It has been held as under:-

"18. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 CrPC. In that case, the complaint case will proceed further in accordance with the provisions of the CrPC."

6. In Pepsi Foods Ltd. and Another (supra), while relying upon judgment in State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335 it was held by the Supreme Court that the power under Article 226 of the Constitution of India and under Section 482 of the Cr.P.C. could be exercised by the High Court either to prevent abuse of the process of Court or to secure the end of justice. It was observed that the powers conferred on the High Court under Article 226 and 227 of the Constitution of India and under Section 482 of the Cr.P.C. have no limits. It was held as under:-

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under

Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to."

7. In *Kapil Agrawal and Others* (supra) it has been held by the Supreme Court that when the FIR is an abuse of process of law the same can be quashed in exercise of powers under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C.. Inherent jurisdiction under Section 482 of the Cr.P.C. and / or under Article 226 of the Constitution of India is designed to achieve salutary purpose that criminal proceeding ought not to be permitted to degenerate into weapon of harassment. It was held as under:-

"18. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 CrPC. In that case, the complaint case will proceed further in accordance with the provisions of the CrPC.

18.1. As observed and held by this Court in a catena of decisions, inherent jurisdiction under Section 482 CrPC and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of inherent powers, such proceedings can be quashed.

18.2. As held by this Court in *Parbatbhai Aahir v. State of Gujarat* [*Parbatbhai Aahir v. State of Gujarat*, (2017) 9 SCC 641 : (2018) 1 SCC (Cri) 1] , Section

482 CrPC is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution."

8. Thus, the consisting view of the Supreme Court has been that for the purpose of abuse of process of law and to secure the ends of justice, power can be exercised by High Court either under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. It has nowhere been laid down that it is only the power under Article 226 of the Constitution of India which should be exercised or only under Section 482 of the Cr.P.C. The same has been in effect held to be concurrent jurisdiction of the High Court since powers under both of them are similar in nature and are in fact akin to each other.

9. In *Preeti Gupta and another* (supra) relied upon by the learned counsel for the respondents, it has only been stated that the power under Section 482 of the Cr.P.C. should be exercised with care and caution. The issue involved in the said case was not whether for quashment of the FIR jurisdiction under Section 482 of the Cr.P.C. should be exercised or whether the same can be exercised even under Article 226/227 of the Constitution of India. The same is the factual situation in the case of *Geeta Mehrotra and Another* (supra) and *K. Subbarao and Others* (supra). The judgment in the case of *Lajjaram Jatav* (supra) relied upon by learned counsel for the respondents does not help him in any manner in view of the aforesaid judgments of the Supreme Court.

10. In view of the aforesaid discussion, this petition under Article 226 of the Constitution of India is held to be maintainable.

List for further consideration in the last week of March, 2024.