
(2005) 06 AHC CK 0022

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 5840 of 2005

Mukesh, Heera Lal and Guddu

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 22, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 161, 17, 170, 172, 172(3)
Evidence Act, 1872 — Section 145, 161
Penal Code, 1860 (IPC) — Section 392

Citation : (2005) 06 AHC CK 0022

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Advocate : Gaurav Sharma, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed with prayer that a Writ, order or direction be issued in the nature of certiorari, commanding the respondents to send the entire record and the proceedings against the petitioners, for quashing the same, as well as for issuing a writ of mandamus commanding the respondents to provide a copy of the case diary and other proceedings related to petitioners, in order to enable them to defend their case.

2. The facts of the case are that a First Information Report (hereinafter called "F.I.R.") in Case Crime No. 60 of 2005, u/s 392 of the Indian Penal Code (hereinafter called "I.P.C") was lodged with the Police Station Saidabad, District Hathras (Mahamayanagar) on 13.3.2005. In the F.I.R., two persons were named as accused. The names of the petitioners do not find mention in the said F.I.R. In pursuance of the same, investigation commenced, and it appears that during investigation, the names of the petitioners were also revealed. Accordingly, the police is trying to apprehend the petitioners. In such an eventuality, the Investigating Officer filed an application in the Court of the Judicial Magistrate,

Saidabad District Hathras (Mahamayanagar) for permission to proceed u/s 82 of the Criminal Procedure Code, 1974 (hereinafter called "Cr.P.C), and that application has been allowed vide order dated 6th May, 2005. Hence this petition for quashing all the proceedings.

3. Shri Gaurav Sharma, learned counsel for the petitioners has submitted that it is a fit case where this Court should issue a writ of certiorari quashing the entire proceedings as petitioners have a right to information as for what offence and in what case they are wanted. The reputation of the petitioners is at stake and that itself is sufficient ground for interference by the writ Court. Entire proceedings against the petitioners are in violation of the provisions of Articles 21 and 22 of the Constitution of India. Thus, this Court should quash the entire proceedings after calling the record.

4. In support of his contention, the learned counsel for the petitioners has referred to and relied upon a large number of judgments including in re Maura Limaye and Ors. AIR 1969 SC 1014; Vimal Kishore Mehrotra Vs. State of Uttar Pradesh and Another, ; The State of Punjab Vs. Ajaib Singh and Another, ; Uttarakhand Sangharsh Samiti v. State of U.P. and Ors., 1996 AWC 469; Rama Kant v. State 1988 AWC 1354; Swaroopa Vs. State of Andhra Pradesh and Others, ; Ashok Kumar Singh v. State of U.P. 1998 AWC 604; and State of Bihar Vs. Lal Krishna Advani and Others, .

5. The writ petition has been filed submitting that petitioners have falsely been enroled in the crime excluding the names of the real Accused by the Investing Officer after taking illegal gratification from them; on 6.5.2005, Judicial Magistrate Saidabad, District Hathras allowed the application of the investigating Officer u/s 82 Cr.P.C. On coming to know about the said order, petitioners immediately filed applications to surrender before the said Court. On 18.5.2005 petitioners moved an application before the court concerned to provide the copy of the case diary. The said application has been dismissed. The order of rejection of their prayer for giving them the copy of the case diary is violative of provisions of Sections 21 and 22 (1) of the Constitution of India Relevant part of the prayer clause reads as under:-

i) issue a writ, order or direction in the nature of certiorari commanding the respondents to send the entire records and all the entire proceedings against the petitioners for quashing the same to the extent it relates to the petitioners.

ii) issue a writ, order or direction in the nature of mandamus directing the respondents to provide copy of the case diary and other proceedings which relate to the petitioners. so! that they may be able to defend their cases.

6. The record reveals that on the application filed by the petitioner for surrender the Court below asked for the report from the Investigating officer as to whether they were wanted in any criminal case. In pursuance therefor, a report has been submitted on 16.05.2005 by the Investigating Officer that petitioners were wanted in Case Crime No. 60 of 2005, u/s 392, I.P.C., Police Station Sadabad,

District Mahamayanagar. The order/dated 18.05.2005 passed by the Court below reveals that petitioners did not surrender before the Court as they were not present there and the Court refused to call for the case diary as it was required only at the time of the hearing of bail application and not before that.

7. It is not the case of the petitioners that the proceedings u/s 82 Cr.P.C. had been taken in violation of the mandatory requirement of the statutory provisions. This Court has consistently held that the provisions of Section 82/83, Cr.P.C. can be resorted to only in exceptional circumstances for the reason that every person who is not immediately available, may not necessarily be an absconder. The Court has to record that it is satisfied that the accused has absconded or is avoiding execution of warrant. The provisions can be resorted to only where the warrant is not executed and that is also not necessary in every such case. The provisions of Section 82 are mandatory and require strict adherence. (Vide *Devendra Singh Negi alias Debu v. State of U.P. and Anr.* 1993 U.P. Cr.R 260 and *Kapil Muni Karwana v. State of U.P.*, 1996 U.P. Cr.R 653. However, there are no grounds of challenge to Section 82 proceedings. In *Devendra Singh Negi (Supra)*, this Court has held that in case an accused wants to surrender and makes proper application before the Court his prayer should be accepted.

8. In the instant case, the Police has submitted the report that the petitioners are wanted in a criminal case. It is evident from the perusal of the order dated 18.5.2005 that petitioners did not surrender, rather asked for furnishing the information and calling for the case diary.

9. This petition has been filed in a most casual manner without challenging any specific order or even seeking quashing of the F.I.R. The petition is totally misconceived and issue of right to information etc. is not involved in this fact-situation as the accused cannot claim the right to know each and every thing in respect of the investigation. Provisions of Section 172 Cr.P.C. put an embargo seeing the copy of the case diary by the accused. In case the investigation is complete and the police files the charge sheet against him, he is bound to be supplied the copies of the documents which prosecution wants to rely upon Against him in the trial, as required u/s 173 Cr.P.C, and this is not the stage where petitioners can claim copy of the case diary or any other information in respect of the investigation.

10. Section 2 (h) Cr.P.C, defines investigation and it includes all the proceeding under the Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorised, by a Magistrate in this behalf. During investigation, the police has to maintain the case diary keeping the entire information in respect of the investigation as required u/s 172 Cr.P.C. The investigation comes to an end with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge sheet u/s 173 Cr.P.C. Therefore, it is evident that the investigation comes to an end only when the police report is submitted before the Court

concerned u/s 173 Cr.P.C. and in case the Magistrate further directs the Investigating Agency to investigate the case further in exercise of power under clause (8) of Section 17 Cr.P.C., the collection of evidence in pursuance thereof shall also be a part of the investigation. (Vide H.N. Rishbud and Inder Singh Vs. The State of Delhi, ; The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, ; and Union of India (UOI) Vs. Prakash P. Hinduja and Another, .

11. Section 172 Cr.P.C. deals with the diary of proceedings in investigation and the same reads as under:-

"172. Diary of proceedings in investigation.- (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the Information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances [ascertained through his investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be of the Indian Evidence Act, 1872 (1 of 1872), shall apply."

(Emphasis added).

12. The provisions of Section 172 Cr.P.C. had, been subject matter of consideration before the Courts from time to time.

13. The purpose of maintaining the case diary is that the Court may examine as to whether the investigation has been made promptly/efficiently and in accordance with law. The entries in the case diary are to be made with scrupulous completeness and efficiency. (Bhagwant Singh Vs. Commissioner of Police, Delhi, .

14. Case diary cannot be used as evidence by either side. (Vide State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; and Malkiat Singh and Others Vs. State of Punjab, .

15. The accused can peruse that particular part of the case diary in the context of Sections 145 or 161 of the Evidence Act - (a) if it is used by the police officer concerned to refresh his memory or (b) if the Court uses, it for contradicting the official concerned. (Vide Mukund Lal Vs. Union of India (UOI) and Another,

16. In Mukund Lal (supra), the Hon"ble Supreme Court placed reliance upon the Judgment of this Court in Mahabirji Birajman Mandir Vs. Prem Narain Shukla and

Others, , wherein this Court while explaining the nature of case diary has observed as under:-

"These reports are of confidential nature and privilege can be claimed thereof. Further the disclosure of contents of such reports cannot help any of the parties to the litigation, as the report invariably contains the opinion of such officers and their opinion is inadmissible in evidence."

17. The Hon"ble Supreme Court observed as under:-

"The public interest requirement from the stand point of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the Court, which is the ultimate custodian to the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded. There would be no prejudice or failure of justice to the accused persons since the Court can be trusted to look into the police diary for the purposes of protecting his interest.

18. The Hon"ble Supreme Court also cautioned not be disclose the contents of the case diary to the accused for the reason that it may disclose the identity of the informant who gave some information which resulted in investigation into a particular aspect. The public interest demands that such an entry is not made available to the accused which might deter the informant from giving any information to assist the Investigating Agency.

19. The case diary cannot be used either as substantive or as corroborative evidence in the trial. (Vide AIR 1933 124 (Privy Council) ; and Habeeb Mohammad Vs. The State of Hyderabad, . The case diary is primarily meant as aid to the Court during the trial. [(Vide Karan Singh and Others Vs. Emperor, ; State Vs. Fateh Bahadur and Others, ; and K. Abdul Rahiman and Others Vs. Divisional Forest Officer and Another,

20. The case diary may be used to suggest means for further elucidating by legal evidence points that need clearing up. [(Vide Habeeb Mohammed (supra)].

21. It is the Court and not the accused person or his agent that can use the case diary for the purpose of contradicting the police officer who prepared it. [Vide (1897) 11 All 390 (FB)].

22. The case diary can be used for the purpose of refreshing the memory and for the purpose of contradicting the Police Officer who prepared it. Vide Shamshul Kanwar Vs. State of U.P.,

23. The another purpose is that Court may satisfy, itself as to whether the investigation has been made in accordance with the required procedure. (Vide P.P. Sharma (supra).

24. The Case diary cannot be used by defence to contradict the prosecution evidence. Therefore, the defence cannot place any reliance on it. Nor it is admissible in evidence. [(Vide Malkiat Singh (supra)].

25. In T.T. Antony Vs. State of Kerala and Others, , the Hon"ble Supreme Court held that a "just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expensive power of the Police to investigate a cognisable offence has to be struck by the Court.

26. Article 21 of the Constitution comes to the rescue of an accused to challenge only that investigation has not been done in accordance with the procedure established, by law. Thus, the accused has to establish that investigation has not been concluded with due observance of the procedure established: by law. [(Vide State of Bihar v. P.P. Sharma (supra)].

27. In Mukund Lal (supra), the Apex Court held that in view of the safeguards where the Court itself takes care of the interest of the accused, it cannot be held that the provisions of Sub-section 3 of Section 172 Cr.P.C would fail to meet the test of reasonableness.

28. The Rajasthan High, Court has examined the validity of the provisions of Sub-Section (3) of Section 172 Cr.P.C. In Subhash Chandra Vs. Union of India (UOI) and Others, and held that when in the enquiry or trial, everything which may appear against the accused has to be established, and brought before the Court by evidence other than the diary and the accused can have the benefit of the cross-examination of the witnesses and the Court has power to call for the diary and use it, of course not as evidence but in aid of the enquiry or trial, the provisions u/s 172 (3), cannot be said to be unconstitutional.

29. In Darya Singh and Others Vs. State of Punjab, , the Court held that in case the Court start scrutinising the case diary and/preparing the list of witnesses whom the prosecutors must examine, is virtually to suggest that the Court should itself take the role of prosecutor. Therefore, the case diary cannot be held to be a much relevant document for trial unless the prejudice is caused to the accused. The diary can be used even by the court for a very limited purposes as explained hereinabove.

30. The provisions of Section 173 Cr.P.C. provide for filing the report of a Police Officer on completion of investigation and the relevant part for our purpose reads as:

"173. Report of police officer on completion of investigation.-
(1)

(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate alongwith the report -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation

(b) the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not

relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in Sub-section (5)."

31. The statutory requirement is that when the investigation stands concluded and the police report is submitted only at that stage the accused or the complainant shall be entitled to have the copies of the documents which are to be relied upon by the prosecution during the trial.

32. In *Gurbachan Singh Vs. State of Punjab*, , the Hon''ble Apex Court explained the scope of the provisions of Section 173 Cr.P.C. observing that the documents to be relied upon by the prosecution, are bound to be supplied to the accused and the object of this provision is to put the accused on notice of what he has to meet at the time of enquiry or trial.

33. In *Narayan Rao Vs. The State of Andhra Pradesh*, , the Hon''ble Supreme Court again considered the scope of provisions of Section 173 read with section 207 Cr.P.C. and held that the provisions are not even mandatory and are directory. Non-compliance of the provisions would not vitiate the proceedings rather it is merely an irregularity which can be rectified and once the documents to be relied upon by the prosecution against the accused have been supplied to him, the trial will proceed further and the evidence etc. shall be recorded. While deciding the said case, the Hon''ble Supreme Court placed reliance upon the judgment of the Privy Council in AIR 1927 44 (Privy Council) , wherein, it had been held that such an omission was merely an irregularity which could be rectified under the provisions of Section 537 Cr.P.C.

34. In *Jogendra Nahak and Others Vs. State of Orissa and Others*, , the Hon''ble Supreme Court again explained the scope of the provisions of Section 173 observing as under:-

"Section 173 says that on completion of investigation, the officer-in-charge of police-station shall forward a report to the Magistrate, stating, inter-alia, the names of the persons who appear to be acquainted with the circumstances of the case. Sub-section (5) of Section 173 requires that the police officer shall forward to the Magistrate along with the said report (a) all documents or relevant extract thereof on which the prosecution proposes to rely and (b) the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses. Even when a further investigation, as required under sub-section (8) is conducted by the police, they have to comply with all the requirements contained in the preceding subsections."

35. A similar view has been reiterated by the Apex Court in Central Bureau of Investigation (CBI) Vs. R.S. Pai and Another, , wherein explaining the scope of Sub-sections (5) and (8) of Section 173 Cr.P.C, the Court held that the word "shall" used in sub-section (5) for requiring the Police Officer to. forward to the Magistrate at documents is directory and not mandatory. If some mistake is committed in not submitting all the documents at the time of submitting the charge-sheet, it is always open to the Investigating Officer to produce the, same with the permission of the Court at a later stage. The Court held that there is no statutory bar for the prosecution to file the documents which could not filled it the earlier stage, later on.

36. A Constitution Bench of the Hon"ble Supreme Court in Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, , elaborately examined the scope of Chapter XIV of the Cr.P.C, which also contains Section 173 and held that the requirement of the provisions of Section 173 is to provide a fair trial to the accused as by furnishing the documents which can be relied upon against him, so that he may defend himself effectively. Unless there are compelling circumstances, the High Court should not exercise its discretion in such a case and the trial Court should be permitted to proceed in accordance with law otherwise it would unnecessarily impede the progress of the trial. However, the High Court must interfere in a case where it comes to the conclusion that omission on the part of the Investigating Agency or the Court below has caused prejudice to the accused.

37. Thus, in view of the above, the inference can be drawn that the accused are not entitled to seek the copy of the statement of any witness recorded u/s 161 Cr.P.C. or any other part of the evidence collected by the Investigating Officer prior to reaching the stage of filing the charge sheet. The accused cannot ask for the copy of the case diary at any stage. He is entitled only for receiving the copy of the documents which are being relied by the prosecution against him.

38. The relief sought herein cannot be granted as it would be in contravention the statute itself. The Court has no competence, to issue a direction contrary to law. (Vide Union of India and Another Vs. Kirloskar Pneumatic Company Limited, State of U. P. and others Vs. Harish Chandra and others, ; and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, .

39. In State of Punjab and others Vs. Renuka Singla and others, , dealing with a similar situation the Hon"ble Apex Court observed as under:-

"We fail to appreciate as to how this High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

40. Similarly, in Karnataka State Road Transport, Corporation v. Ashrafulla Khan and Ors. AIR 2002 SC 529, the Hon"ble Apex Court has held as tender:-

"The High Court under Article 226 of the Constitution is required to enforce rule

of law and not pass order or direction which is contrary to what Has been injected by law."

41. Thus, in view of the above, the relief sought by the petitioners that the direction be issued to the Court below to furnish them the copy of the case diary cannot be allowed.

42. It is settled legal proposition that whatever may be the law, if on factual matrix, the petitioner is not entitled for relief sought by him, no interference is required in writ jurisdiction. (Vide Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, ; Dr. N.C. Singhal Vs. Union of India (UOI) and Others, ; & Khalid Hussain (Minor), Represented by Father Dr. Akthar Hussain Vs. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and Ors, .

43. Be that as it may, the case requires to be considered as to whether the instant case presents special feature which may warrant quashing of the F.I.R. though not sought specifically by the petitioners.

44. Legal maxim *Quando Aliquid Mandatur, Mandatur Et Omne Per Quid Per Venitur Ad Illud*"- means if anything is commanded, every thing by which it can be accomplished is also commanded. But the inherent power of quashing the 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. or complaint and the extraordinary and inherent powers of Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. The same can be resorted to for correcting some grave error that might be committed by the subordinate courts or where the complainant, at the instance of somebody else wants to settle his score with other party and uses deliberately the machinery of the Court for oblique purpose and the party is likely to be subjected to unnecessary harassment for facing criminal proceedings or where the Court is satisfied that in case the proceedings are not quashed, there will be gross miscarriage of justice. 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 High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power u/s 482 of the Code or under Article 226 or 227 of the Constitution of India, as the case may be, and allow the law to take its own course. For the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible. (Vide AIR 1945 18 (Privy Council); State of Karnataka Vs. L. Muniswamy and Others, ; State of West Bengal v. Swapan Kumar Guha AIR 1982 949; Pratibha Rani Vs. Suraj Kumar and Another, ; Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao

Chandrojirao Angre and Others, ; Janata Dal Vs. H.S. Chowdhary and Others, ; Union of India and another Vs. W.N. Chadha, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; State of U.P. Vs. O.P. Sharma, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; G. Sagar Suri and Another Vs. State of U.P. and Others, .

45. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , the Hon"ble Supreme Court held as under:-

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

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

46. The Court's power is limited only to examine that the process of law should not be misused to harass a citizen and for that purpose the high Court has no authority or jurisdiction to go into the matter or examine the correctness of . allegations unless the allegations are patently absurd are inherently improbable so that no prudent person can ever reach to such a conclusion and that there is sufficient ground for proceeding against the accused but the Court, at that stage, cannot go into the truth or falsity of the allegations. The inherent power of the High Court are limited to very extreme exceptions. A criminal prosecution can be short-circuited in rarest of rare cases, and even in a case of breach of contract, not only civil remedy is attracted but a person can be held responsible for criminal prosecution and under no circumstance "civic profile" can out-way the "criminal out fit". (Vide State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Rajesh Bajaj Vs. State NCT of Delhi and Others, ; Trisuns Chemical Industry Vs. Rajesh Agarwal and others, ; The Nagpur Steel and Alloys Pvt. Ltd. v. P. Radhakrishna (1997) SCC 1073; Dr. Sharma's Nursing Home v. Delhi Administration (1998) 8 SCC 745; and Medchl Chemical & Pharma (P) Ltd. v. Biological E. Ltd. and Ors. AIR 2000 SC 1869).

47. While considering the issue of malafides in such a case, the Apex Court in Ch. Bhajan Lal (supra), held as under:-

"At this stage, when there are only allegations and recriminations on no evidence, this Court could not anticipate the result of the investigation and rendered a finding on the question of mala fides on the materials at present available. Therefore, we are unable to see any force in the contentions that the complaint should be thrown over board on the some unsubstantiated plea of mala fides."

48. In Sheonandan Paswan Vs. State of Bihar and Others, , the Hon"ble Apex Court while dealing with the issue of mala fides in criminal law observed:

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

Similarly, in *State of Bihar v. J.A.C. Saldanna* AIR 1980 SC 329, the Apex Court has held as under:-

"It must, however, be pointed out that if an information is lodged at the police station and an offence is registered, the mala fide of the informant would be of secondary importance if the investigation produced unimpeachable evidence disclosing the offence."

49. In *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, , the Hon"ble Supreme Court held that when an information is lodged and the offence is registered, the mala fides of the informant would be of secondary importance as it is a material collected during the investigation and evidence led in Court which decides the fate of the accused persons. The allegations of mala fide against informant are of no consequence and cannot, by themselves, be the basis for quashing the proceedings. While deciding the said case, reliance had been placed on the earlier judgment in *State of Bihar v. P.P. Sharma* AIR 1991 SC 1960.

50. In *Sarjudas and Another Vs. State of Gujarat*, the Hon"ble Supreme Court held that there must be cogent evidence of mala fides or malicious intention of the informant or the complainant for taking note of the allegations of mala fide. The bald statement in this respect is not sufficient.

51. Similar point have been formulated by the Apex Court in *State of West Bengal and another Vs. Mohammed Khalid and others*, ; *State of Delhi v. Gyan Devi and Ors.* AIR 2001 SC 40).

52. In *Minakshi Bala Vs. Sudhir Kumar and Others*, , the Hon"ble Apex Court held that once the charge had been framed u/s 240 Cr.P.C., the High Court, in exercise of its revisional jurisdiction, is not justified in invoking its inherent power to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. Similar view has been reiterated by the Hon"ble Supreme Court in *State of M.P. Vs. S.B. Johari and Others*, .

53. In *Ram Kumar Laharia Vs. State of Madhya Pradesh and Another*, , the Supreme Court considered the scope of exercise of revisional powers and held that at this state, the Court is not permitted to weight the evidence. Whatever is permissible in law is that the court can assess the improbability or absurdity of the statement of witnesses. In case the evidence so collected prima facie suggests direct contact with the accused, the court cannot interfere with the order of framing the charge.

54. In *Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others*, , the Apex Court held that in exercise of the revisional jurisdiction, the High Court

is not permitted to interfere at initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons.

55. In *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*, , the Hon''ble Apex Court quashed the charges for the reason that the appellant therein had been charged of the offence of abetment and after considering the evidence, the Apex Court recorded the finding that the ingredients of abetment were totally absent in the facts and circumstances of the case. Similarly, in *Ram Ekbak Missir Vs. Ram Niwash Pandey @ Sri Niwash Pandey and Others*, , the Hon''ble Supreme Court quashed the criminal proceedings wherein the cognizance of the offence was taken after twenty-one years of lodging the first information report and the case had been dragged for more than two decades without any fault on the part of the accused. Moreso, the Apex Court also came to the conclusion that the cognizance had been taken in a mechanical manner. It has further been observed that neither the victim nor the accused should suffer by the mischief of the investigating agency or the staff of the court and such a delay was found to be a ground for quashing the charges.

56. In *State of M.P. v. Awadh Kishore Gupta and Ors.* AIR 2004 SC 517, the Hon''ble Supreme Court explained the scope of inherent powers of the Court to quash the proceedings observing as under:-

"Exercise of power u/s 482 of the Code in a case of this nature is an 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 . In Envisages their circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to in order under the Code, (ii) to prevent abuse of the process of court end (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 impossibly 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, alt such power is as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse 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 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 of 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."

57. Thus, in view of the above, the legal proposition can be summarised that the High Court, in exercise of its powers under Article 226/227 of the Constitution or Section 482 Cr P.C. is not permitted either to weigh the evidence or examine the adequacy of the evidence for framing of the charges and if it comes to the candus on that there is some prima facie evidence connecting the accused with the crime the proceedings cannot be quashed at this stage. However, the Court has to examine that in case the ingredients of the offence alleged against the accused are absent in the fact and circumstances of the case and the trial was nothing but an abuse of the process of the court, the court should not hesitate in quashing the charges/proceedings.

58. If the case of the petitioners is examined in the light of the aforesaid settled legal proposition, the relief sought by the petitioners cannot be granted. The petitioners has made allegations of mala fides that the real accused persons have been ousted from the scope of trial by the Investigating Officer taking illegal gratification. There is nothing on record to support the said bald allegation. Such a bald statement of taking bribery cannot be accepted in a writ jurisdiction. More so, a person against whom allegations of mala fide has been made is not impleaded by name. The ratio of the judgments, referred to and relied upon by the petitioners" counsel is not applicable in the instant case as the facts of those cases had been quite distinguishable. It is the duty of the Court to protect the right and interest of the petitioners in view of the statutory provisions of Sections 172 and 173 Cr.P.C. Thus, their grievance that their rights under Articles 21 and 22 of the Constitution are violated, is not worth consideration.

59. Petitioners have annexed the documents wherein they have been furnished the information that they are wanted in Case Crime No. 60 of 2005, u/s 392 I.P.C., Police Station Saidabad, District Mahamayanagar, in pursuance of the F.I.R. dated 13.05.2005, therefore, it is not the case where the petitioners have not been informed as in what case, for what offence they are wanted. In view of the above, they cannot be permitted to agitate that their right to information has been defeated or any of their rights guaranteed under Articles 21 and 22 of the Constitution is being defeated.

60. Petition is accordingly dismissed. However, if the petitioners surrender before

the Court below and move application for bail, we request the Court concerned to proceed in accordance with law laid down by this Court in Smt. Amrawati and Anr. v. State of U.P. (50) 2004 ACC 742.