

**(2018) 12 MP CK 0001**

**In the Madhya Pradesh High Court**

**Case No : Misc. Criminal Case No. 10690 Of 2017**

Rajesh Bairangi

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

**Date of Decision : 05-12-2018**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Code of Criminal Procedure, 1973 — Section 161, 164, 173(2), 190, 202, 226, 227, 228, 313, 397, 482

Indian Penal Code, 1860 — Section 34, 107, 120B, 306, 409, 420, 467, 468

**Citation : (2018) 12 MP CK 0001**

**Hon'ble Judges : G. S. Ahluwalia, J**

**Bench : Single Bench**

**Advocate : S.L. Dhakad, R.K. Awasthi**

**Final Decision : Dismissed**

## Judgement

This application under Section 482 of Cr.P.C. has been filed seeking quashment of the FIR in Crime No.84/2014 registered by Police Station Govardhan, District Sheopur for offence under Sections 420, 409, 467, 468 and 120-B of IPC.

During arguments it has been accepted by the counsel for the applicant that charges have been framed and at least five witnesses have already been examined and the applicant has not filed any revision against the order framing charges. It has also been fairly conceded that this petition has been filed after the charges were framed without challenging the same.

According to the prosecution case, the applicant was working on the post of Assistant Teacher in Government Higher Secondary School, Ganjigarh and the applicant was the incharge of disbursement of cycles to students. It is further submitted that a complaint was made that one of the students has neither received the cycle nor has received the amount in lieu of the cycle, however, at a later stage it was found that the cheque of Rs.2,500/- was issued in the name of the brother of the applicant and the brother of the applicant, got it encashed

from the bank, however, neither the said cheque bears the signature of the applicant nor the applicant was responsible for issuance of the cheque in the name of his brother.

Per contra, it is submitted by the counsel for the State that the District Education Officer, District Sheopur by its letter dated 1/11/2014 has specifically informed that the applicant was the incharge of disbursement of cycles and scholarship. Even the witnesses in their ocular statements have stated that the applicant was the incharge of disbursement of scholarship and cycles. By referring to the statement of the father of the beneficiary, namely, Narayan Singh Dhakad, it is submitted by the counsel for the State that he has specifically stated that when his daughter did not receive the cheque, then he had approached the applicant who assured that for some reasons the cheque could not be released in favour of his daughter, but he would get the cheque at a later stage. Even the brother of the applicant also assured that the beneficiary would get the cheque, but when they did not get the cheque, then on one day he went to the school where he was informed by the Principal that it is the duty of the applicant to disburse the scholarship and cheque in lieu of the cycle. Thereafter, the Principal after going through the record of the school informed that the cheque of beneficiary was taken away by the present applicant and his brother on the pretext that they would hand over the cheque to the father of the beneficiary, but in fact the said amount was misappropriated.

Heard learned counsel for the parties.

Before considering the submissions made by the counsel for the parties, it would be necessary to consider the scope of powers under Section 482 of Cr.P.C.

The Supreme Court in the case of Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy reported in (2011) 12 SCC 437 has held as under:

"8. Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled "Miscellaneous" which reads as under:

"482. Saving of inherent powers 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."

This section\* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under CrPC,
2. to prevent abuse of the process of any court,
3. to secure the ends of justice.

9. In *R.P. Kapur v. State of Punjab* AIR 1960 SC 866 this Court laid down the following principles:

(i) Where institution/continuance of criminal proceedings against an accused 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;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

10. In *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 this Court has held as under: (SCC p. 703, para 7)

"7. ... In the exercise of this wholesome power, 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 saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. 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."

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita v. State* 2000 Cri LJ 315 and *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi v. R. Prasanna Kumar* 1990 Supp SCC 686; *Ganesh Narayan Hegde v. S. Bangarappa* (1995) 4 SCC 41 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* (2005) 1 SCC 122.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194 and *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736.

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18. In *State of Orissa v. Saroj Kumar Sahoo* (2005) 13 SCC 540 it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

"11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 this Court held as under: (SCC p. 695, para 7)

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao* case (1988) 1 SCC 692 was reconsidered and explained by this Court in *State of Bihar v. P.P. Sharma* 1992 Supp (1) SCC 222 which reads as under: (SCC p. 271, para 70)

"70. *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692 also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. ... Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692 does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia* (1988) 1 SCC 692 is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal".

The Supreme Court in the case of *State of Orissa v. Ujjal Kumar Burdhan* reported in (2012) 4 SCC 547 has held as under :

"8. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of W.B. v. Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

"65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of

this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. ...

66 . Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case.

... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

(emphasis supplied)

10. On a similar issue under consideration,

in Jeffrey J. Diermeier v. State of W.B., while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"20. ... The section itself 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. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of Vinod Raghuvanshi Vs. Ajay Arora, reported in (2013) 10 SCC 581 has held as under :

"30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

The Supreme Court in the case of Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors. reported in AIR 1976 SC 1947 has held as under:-

"6. .... The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed.....

7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents No.1 and 2."

Thus, it is clear that when the entire allegations are accepted on their face value and if they do not disclose the commission of offence, only then this Court in exercise of powers under Section 482 of Cr.P.C. can quash the proceedings. It is well established principle of law that the legitimate prosecution should not be stifled in the mid way.

It is the stand of the applicant that he was not the incharge of disbursement of cycles or scholarship. In the light of the letter issued by the District Education Officer on 1/11/2014 as well as the ocular evidence of the witnesses, it is clear that there is documentary evidence as well as ocular evidence to show that the applicant was the incharge of disbursement of scholarship and cycles. The applicant was also the member secretary of the committee. Further, the cheque was issued in the name of the brother of the applicant and who got it encashed from the bank. Thus it is clear that neither the beneficiary was given the cycle nor the amount in lieu of the cycle was given to her, but on the contrary, the amount which was payable to the beneficiary was misappropriated by issuing a cheque in the name of the brother of the applicant, who in his turn, got it encashed by presenting the same in the Bank. Thus prima facie, misappropriation of fund is established. In the considered opinion of this Court prima facie there is sufficient material to create grave suspicion against the applicant that he might have committed the offence. Even for the purpose of framing of charges, roving enquiry is not permissible and the grave suspicion to the effect that the accused might have committed the offence is sufficient to frame the charge.

The Supreme Court in the case of Ajay Kumar Parmar vs. State of Rajasthan reported in AIR 2013 SC 633 has held as under:-

"14. The Magistrate, in exercise of its power under Section 190 Cr.P.C., can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 Cr.P.C., if any, do not make

out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case."

The Supreme Court in the case of *Soma Chakravarty vs. State (Th. CBI)* reported in 2007 AIR SCW 3683 has held as under:-

"20. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

The Supreme Court in the case of *P. Vijayan vs. State of Kerala and Anr.* reported in 2010 CRI. L.J. 1427 has held as under:-

"10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

The Supreme Court in the case of *State of Bihar vs. Ramesh Singh* reported in AIR 1977 SC 2018 has held as under:-

"... ..Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to

think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. .... "

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused."

The Supreme Court in the case of Union of India vs. Prafulla Kumar Samal reported in AIR 1979 SC 366 has held as under:-

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

The Supreme Court in the case of Niranjana Singh vs. K.S. Punjabi vs. Jitendra Bhimraj Bijjaya reported in AIR 1990 SC 1869 has held as under:-

"Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence

adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh (AIR 1977 SC 2018) this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal (AIR 1979 SC 366) this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

The Supreme Court in the case of Amit Kapoor vs. Ramesh Chander & Anr. reported in (2012) 9 SCC 460 has held as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.

There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. x x x x x x x

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39: (SCC pp. 41-42, para 4)

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no

sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

20 to 26 x x x x x x x

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

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 be loath 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 therewith 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 the 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 W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. 8 MCRC.6606/2015 Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

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 with the requirements of the offence.

28. x x x x x x

29. In the light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that "this aspect of the matter will get unravelled only after a full-fledged trial", once the High Court itself was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.

30. We have already noticed that the legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in *State of Maharashtra v. Som Nath Thapa* (1996) 4 SCC 659 referred to the meaning of the word "presume" while relying upon Black's Law Dictionary. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence."

It is well established principle of law that at the time of framing of charges, meticulous appreciation of evidence is not required and even a strong suspicion is sufficient to frame the charges.

Accordingly, in view of the aforesaid facts and circumstances of the case, this Court is of the considered view that no case is made out for quashing the proceedings, which are pending against the applicant.

Accordingly, the application fails and is hereby dismissed. However, this Court thinks it appropriate to issue a word of suggestion to the trial court that this Court has made the observations in this order in the light of the limited scope of interference at this stage. The trial court is directed to decide the trial strictly in accordance with the evidence which would come on record during trial without getting prejudice by any of the observations made by this Court.