

(2014) 10 KAR CK 0244

In the Karnataka High Court

Case No : Writ Petition No. 43825 of 2014 (GM-RES)

Shreemad Jagadguru Shankaracharya

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 157, 161, 164, 166(3)

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 123, 153B, 34, 354A, 375

Citation : (2015) CriLJ 827

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : B.V. Acharya and Manmohan P.N, Advocates for the Appellant;
Ravivarmakumar, M.T. Nanaiah, Shankarappa and Prabhugouda B. Tumbigi,
Advocates for the Respondent

Judgement

K.N. Phaneendra, J.—The petitioner moved this court seeking issue of Writ of Certiorari or any other appropriate writ or Order quashing all further proceedings and the FIR dated 28.8.2014 registered in Crime No. 164/2014, registered by Girinagar Police, (FIR in Crime No. 219/2014, registered earlier by Banashankari Police, transferred to Girinagar Police) and for such other reliefs as the court deem fit to grant under the circumstances of the case. An interim prayer was also made by the petitioner seeking some protection from arrest during the pendency of the petition. The case came up before this Court on 8.9.2014 and the Court heard the arguments of the learned Senior Counsel Sri. B.V. Acharya and Sri. Narayana Reddy learned State Public Prosecutor and also Sri. Shankarappa who has taken notice for the second respondent who have protested the granting of the interim prayer. On 9.9.2014, this Court considering the detailed arguments with regard to the interim prayer passed an order directing the investigating officers not to arrest and interrogate the petitioner till next date of hearing. Time to time, the said order has been extended by this Court. At the time of passing of the interim order, this Court has expressed that

the entire materials were not placed before the Court. The FIR produced found to be incomplete and insufficient to draw any inference as to the allegations made in the FIR even broadly accepted, constitute any cognizable offence as argued by the learned counsel for the respondents. The court, therefore, directed the respondents to produce all the necessary materials before the Court and also to file the statement of objections, so that the Court can look into the entire materials on record and to pass appropriate order on merits of the case.

2. The pleadings of the parties are complete. It is the case of the petitioner that, the petitioner is the Pontiff of Shree Samsthana Gokarna-Shree Ramachandrapura Math, Hosanagar, Shimoga District. The said math is founded about a thousand three hundred years ago at Gokarna Kumta Taluk, Uttara Kannada District. The Pontiff acquired large number of disciples, lot of name, fame and reputation.

3. The respondent No. 2 had lodged FIR, before the police against the petitioner making allegations that, her mother (victim) had been sexually exploited by the petitioner herein and that her mother was about to file a complaint to the Police in this regard. Having come to know about the same, the petitioner and his associates had in fact given a false complaint against the father and mother of the second respondent. Therefore, the second respondent lodged FIR seeking protection from the Police. It is also alleged that the supporters of the petitioner making threatening calls to them stating that they would cause physical injury and life threat was also given to them. On the basis of the said allegations Crime No. 164/2014 was initiated on 26.8.2014. The petitioner's counsel has contended that the victim of the case is the mother of respondent No. 2. The nature of allegations and the facts of the case as in the FIR, do not disclose any cognizable offence in order to investigate any matter against the petitioner. The petition also discloses that number of cases including a PIL have been filed against the Math for which the petitioner is the pontiff and some cases are pending before the High Court and etc. It is also contended that an association by name "Gokarna Hitarakshana Samithi" and another NGO by name Astra have filed PIL in WP No. 36998/2013 (GM-RES-PIL), as they were not happy with the handing over of the Gokarna Mahabaleshwara Temple administration to the hands of the petitioner. After the happening of the said event, some disgruntled people having vested interest started continuous attack on the Math and the petitioner-pontiff personally. In this regard, there are several cases pending specifically alleging that the second respondent's father and mother (victim and her husband) by name Premalatha and Divakara Shastry have threatened one Mr. B.R. Chandrashekar that the petitioner has to vacate the seat as Peetadipadi of Sri. Muth, otherwise they would file complaint against the Pontiff alleging sexual harassment to the effect that, the victim has been raped and in that event, the petitioner has to spend rest of his life in jail. They also demanded a sum of Rs. 3 (three) crores in order to keep themselves quiet and desisting themselves from filing any complaint. Making such allegations, a complaint is filed against the victim and her husband before Honnavar Police and the same is

registered in Crime No. 342/14 on 17-8-2014, for the offences punishable under Section 123, 163A and 153B 384 389, 420, 504, 506, 511 and 34 of IPC along with Section 66A on IT Act, 2000. The Police in fact have arrested the victim and her husband. In this background, in order to wreck vengeance and also as a counter blast, the victim has filed a complaint against the petitioner as detailed supra through her daughter making false and untenable allegations against the petitioner. Therefore, it is claimed that the said proceedings deserves to be quashed. It is also alleged in the petition that the victim's husband was working in the Sri. Muth for some time in the management group, subsequently new committee was constituted and he was not selected to the said Committee. This was also one of the reasons to lay false allegations against the petitioner. The victim Premalatha was also one of the performers of Ramakatha Roopaka (dance and music concerts about Ramayana Epic) conducted Nationwide by the Sri. Muth. Taking advantage of the situation that, she being a performer Ramkatha went to different places with the petitioner, she made reckless false allegations that, the petitioner has committed rape on her at several places since 2010. Therefore, the said complaint is baseless, frivolous, vexatious and absurd and the same has been made to wreck personal vendetta to harass and humiliate the petitioner.

4. The learned counsel for the petitioner elaborating his arguments has mainly focused on three grounds as per the decision of Bajanlal's case reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, and contended that though the Hon"ble Apex Court has set out some guidelines under what circumstances the High Court can quash the Criminal proceedings pending before the Police or before any criminal court within its jurisdiction. He mainly relied upon three important guidelines out of others in the said decision. They are as detailed below.

"1. The allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety, do not disclose a prima facie case constituting any offence or make out a case against the accused.

2. The allegations made in the FIR or in the complaint are so absurd and inherently improbable on the basis of which, no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused.

3. The criminal proceedings initiated against the petitioner is manifestly attended with mala fide and the proceedings are maliciously instituted with an ulterior motive for to wreck vengeance on the accused with a view to spite him due to private and personal grudge."

5. It is contended that in this case, the contents of the FIR and even the subsequent statements of the victim does not constitute any offence and the allegations made therein are so absurd and they are inherently improbable and there are materials to show that the criminal proceedings are instituted with an ulterior motive to wreck vengeance. It is contended by the learned counsel that

this court has to consider the status and reputation of the petitioner. In order to ascertain truth or whether any malicious case has been foisted the Court in this regard can sift the material on record though not appreciated. The learned counsel also contended by relying upon certain rulings which I am going to quote little later, that the FIR and the subsequent statements of the victim amply shows that there is a long delay in lodging the complaint and also there are mala fide motives to malign the reputation of the petitioner. The allegations made in the FIR and the statements are totally unbelievable and they show the concoction and also the ulterior motive and that the contents of the FIR and statements are intrinsically not believable. The entire materials also show that the victim and her husband even drafted the complaint after contacting the astrologer by taking opinion to implicate the pontiff about the good and bad time of the petitioner. The court has to apply its conscious mind and deal with the matter. If such complaints are allowed to be continued anybody can lodge such complaint in order to harass the highly reputed people and also in order to make unlawful gain by blackmailing, out of such proceedings. For all these reasons, the learned counsel prayed for allowing of the petition.

6. The State has filed detailed statement submitting that the victim's statement has been recorded by the Police under Section 161 Cr.P.C. and the learned Jurisdictional Magistrate has recorded statement under Section 164 Cr.P.C. Apart from denying all the allegations made by the petitioner, the State has also raised two points questioning maintainability of the petition, firstly on the ground that the victim and her husband, against whom wild allegations have been made, have not been made as parties. Secondly, in criminal proceedings, the proceedings cannot be maintained or continued by the parties through Power of Attorney Holder, when no permission is sought or granted by the Court. It is contended in the statement of objections as well as in the argument by the learned Advocate General that the statement of the victim discloses the offences alleged against the petitioner for the offence punishable under Sections 376, 504, 508, 506 and 354A of IPC. It is contended by the learned Advocate General that the statement of the victim if it is properly read in its perspective, it discloses that the victim and her husband and the people who are the disciples of the petitioner, they work with all love, affection, trust and loyalty due to their fiduciary relationship with the math and the petitioner. There was relationship of Guru and Shishya between the petitioner and the victim. The Guru has got control over the spiritual and religious life of the victim particularly in this case. In this background, the petitioner has persuaded and influenced the victim on all the occasions by using his spiritual influence and also giving the threat of divine displeasure. Due to such inevitable circumstances without any other go the victim became helpless lady and in order to satisfy the Guru, surrendered herself to such influence and trust. Therefore, the said surrender cannot be with consent. If the allegations made in the FIR and statement u/S. 161 of Cr.P.C. of the victim, it clearly discloses that the delay in lodging the complaint has been properly explained. The learned Advocate General has also brought to my notice

that the status of the parties should be equally considered as both have got dignity of their life and the court cannot easily brush aside the allegations made by a lady at the stake of her life, future of herself and her two grown up unmarried daughters in this regard.

7. The learned Advocate General also argued that after the interim Order is passed, there were threats to the victim and there was a suicide committed by the brother of the victim and in this context, a case is also registered the victim has also made a complaint as soon she was arrested and produced before the Magistrate at Honnavar in Crime No. 342/2014, the Magistrate has in utter disregard to the procedure contemplated u/S. 200 or u/S. 166(3) kept the said complaint in a sealed cover which is also available before this Court. Therefore, he contended that looking from any angle the court cannot exercise its power u/S. 482 Cr.P.C. in order to scuttle the investigation, the truth has to be unearthed by the Police.

8. The learned counsel appearing for the second respondent Sri. M.T. Nanaiah, submits that the court can exercise power u/S. 482 of Cr.P.C. in rarest of rare cases. Normally, the Court should not interfere with the investigation. Victim lady is an employee, taking remuneration for her performance in Ramkatha conducted by the petitioner and the muth. She always used to go with the petitioner to several places to perform Ramkatha and the petitioner has taken advantage of the fiduciary relationship exploited her sexually. If the whole statement of the victim is read, it clearly goes to show that the allegations attract the penal provisions and the other allegations made are to be examined by the investigating officer while investigating the matter. He adopted the other arguments of the learned Advocate General and he also pleaded for dismissal of the Writ Petition.

9. After having heard the arguments of the learned counsel for the petitioner and the learned counsel for the respondents, the points to be considered by this court are:

"1. Under what circumstances this court can interfere with the criminal proceedings pending before any Criminal Court or before Police?

2. Whether there are any sufficient grounds to exercise such powers, particularly in this case, in view of the three guidelines in State of Haryana and others Vs. Ch. Bhajan Lal and others, case as focused in this case."

10. Before advertent to discuss the above said two points in detail, it is just and necessary to consider the arguments of the learned A.G. with regard to the maintainability of this petition as adverted to in the statement of objections and argued before the court.

11. The first ground raised before this court is that, lot of allegations have been made against the victim Premalatha and her husband Diwakar in the petition. But those persons were not made as parties to the writ petition; therefore, the

petition is not maintainable for want of necessary parties. The above said argument, in my opinion, is not so strong enough to throw out the petition. Admittedly, though some allegations are made against the victim and her husband, in this case victim has not filed any First Information Report. Her daughter has filed First Information Report in this case and the police have only recorded the statement of the victim under Section 161 Cr.P.C., technically victim and her husband need not be the parties to the proceedings. Even on going through the statement of objections filed by the State and as well as the 2nd respondent discloses that they have meticulously in detail countered the allegations made against the victim and her husband, and contested the matter. Arguments are also addressed to safe guard their interest. Therefore, when there is substantial and adequate representation even on behalf of the victim and her husband through the 2nd respondent, there is no hurdle for this court to go into the merits of this case.

12. The 2nd contention regarding maintainability as adverted to by the learned Advocate General is that, the petition is filed by the power of attorney holder of the petitioner. The criminal proceedings cannot be initiated through any power of attorney holder unless permitted by this court. In this case no application is filed for seeking permission by the petitioner nor is any permission granted by this court in this regard, therefore, the petition is not maintainable. The said argument of the learned counsel though appears to be very sound, but in this particular case not sufficient to weed out the petition on that ground. The petition is filed by way of writ proceedings, though the nomenclature of the proceedings is by way of writ, but in fact it is a petition seeking quashing of the entire proceedings, which subject is covered under Section 482 of Cr.P.C. Though the petitioner has filed the petition through his power of attorney holder, in order to resolve the anomaly, he has also filed affidavit along with reply to the statement of objections filed by the State in which he has fortified and clarified that the contentions taken up in the petition are all on the basis of his instructions and they are all true and correct to the best of his knowledge. Though technically the procedure is not strictly followed nevertheless, it is substantially followed. It is a well propounded principle of law that the court is not precluded from disposing of the matter on merits by ignoring the minor defects or technicalities. The technicalities which do not go to the root of the power of administering justice by the court, then such technicality should be suppressed in order to advance justice. Therefore, instead of throwing out the petition on technical grounds, I prefer to deal with the matter on merits.

13. As I have already referred to the case of Bajanlal, there is no dispute with regard to the guidelines laid down by the Hon'ble Apex Court. Though the court has not exhaustively given the guidelines, but the major guidelines which are relied upon in this case are to be taken note of by this court. Both the counsels have focused and concentrated on the three guidelines in Bajanlal's case noted above. Therefore, there is no need to go away from the guidelines which are only relevant to this case, and to find out any other ground which is available to

quash the proceedings. Therefore, I also answer the queries raised in accordance with the focus of the learned senior counsel for respective parties.

"1. The court has to see whether the allegations made in the FIR and the statement u/S. 161 of the victim and her statement before the learned Magistrate Honnavar, when she was produced before the Court in connection with Crime No. 342/2014, to constitute any cognizable offence against the petitioner."

14. In this regard, it is worth to note for the limited purpose to ascertain as to the allegations made in the FIR and the statement of the victim in writing made to the Magistrate and also the statement u/s. 161 of Cr.P.C. I have carefully perused the said FIR which I have already referred to in my earlier Order. Even at the cost of my repetition, it is just and necessary to look into the said FIR once again. The second respondent who is the daughter of the victim lodged the FIR stating that the victim, victim's husband, and sister of the second respondent are all disciples of the petitioner. It is alleged that her mother has been complaining that she has been sexually abused against her will and her mother had seriously complained against the petitioner and his associates and she wanted to give a complaint to the Police in this regard. It is also alleged that the petitioner's associates have given threatening calls to the respondent No. 2 etc. If this earliest statement is looked into, definitely it did not disclose a vivid, descriptive and also details of the sexual abuse against the victim and also the details of the other allegations by the victim. Perhaps what were limited facts known to second respondent, she must have disclosed the same? The rest of the matter was within the full knowledge of the victim. Therefore, this FIR cannot be called as an encyclopedia of the case. In this background, the statements of the victim, if it is seen, it discloses that the victim has categorically stated by making a vivid and detailed description with regard to the allegations made against the petitioner. It is just and necessary to bear in mind the relevant facts stated by the victim. The statement of the victim made before the Magistrate Honnavar, and statement under section 161 Cr.P.C. are in vernacular (in Kannada language). The sum and substance of the allegations are summarized below.

"It is stated in the FIR that the victim and her husband were disciples of the petitioner muth since long time. The husband of the victim has been working under the petitioner; the victim had been participating as one of the performers in Ramkatha Roopaka as a singer since 2010. She has also stated that she has been going with the petitioner and Ramakatha Troup to several places. She had been receiving remuneration for her performance. In the year 2011, it is specifically alleged that the petitioner started attempting to persuade her in order to have physical contact with her by taking the name of God Sri. Ramachandra and also by praising her, her performance and that, he developed a special interest in her and that it is the wish of the God that he should have physical contact with her. It is also specifically stated that in the year 2011, in the month of September last week, the petitioner persuaded her under the religious and divine pressure and sought for her answer stating that she should

treat him as God - Sri. Ramachandra and surrender herself to the muth and believe, trust the petitioner and not to disclose anything that transpire between him and the victim to any person; in fact he took oath on God "Sri Rama" in this regard. By these persuasions, it is alleged that during October, Second week 2011 he gave some Prasadam to her at a place called Mansar in Delhi, after consuming the said Prasadam by her, in fact he committed sexual intercourse with her for the first time and she did not disclose the same to anybody. She has categorically stated narrating the dates and events on which the petitioner has committed sexual intercourse, by means of pressuring her with religious pressure and also on the basis of divine displeasure of Lord Sri. Ramachandra. It is specifically explained by her that from 2011 September up to June 2014 at about 40 different places the accused has committed sexual assault on her. There is no necessity for this court in detail vividly describe those incidents. However, it is stated that upto June, 2013, the said sexual assault according to her continued. On several occasions, though she was not well, in spite of that the petitioner has mercilessly committed sexual assault on her. It is stated that after 9th June 2013, she did not participate in any of the programs of the muth, but after six months, again she went to the petitioner and requested that she will participate in the math programme, then also the petitioner forced her that she should serve as she was serving earlier. Thereafter also the petitioner on several occasions has committed sexual assault on her up to 27.6.2014. It is further stated by her that during subsequent events when the petitioner has committed rape on her, she has also preserved the clothes worn by her at the time of the sexual assault. She has also given explanation as to why she could not give complaint earlier.

It is further alleged by her that, after June, 2014, she became panic and she has disclosed the same to her husband and his brother-in-law on they all asking her as to why she is so reluctant in the life and so panic, and scared. In spite of that they decided to meet the petitioner after Chaturmasa and to take necessary action later. In the meantime, a complaint was lodged against the victim and her husband and they were arrested."

15. I have also carefully perused the statement of the victim in writing given before the Magistrate. Though the said statement is not meticulous and descriptive, but the allegations of sexual assault on her have been specifically stated by her.

16. On plain reading of the above said complaint discloses some allegations made in the complaint attract some of the penal provisions. Section 375 of IPC defines what is rape, which reads thus:

"Sec 375. Rape: A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into vagina, the urethra or anus of a woman or makes her to do so with him or

any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Under the circumstances falling under any of the following seven descriptions:--

First: Against her will.

Secondly: Without her consent.

Thirdly : With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt.

Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(rest of the provision is not necessary)"

17. On plain reading of the provision 375(a) and (b) refers to the penetration and commission of the offence by various types. The descriptions given u/s. 375 of IPC also says that the act of the accused, if it falls u/s. 375(a) and (b) against the will and without her consent and even with her consent, when her consent has been obtained by putting her, or any person in whom she is interested fear of death or hurt, or with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she believes herself that she is lawfully married.

18. The learned Advocate General in this regard argued very strenuously that Section 114 of the Evidence Act and Section 90 of the IPC clearly envisages that if the victim says that she has not given any consent and gave her explanation under what circumstances she became helpless and under misconception and fear, the said consent was obtained, then the court has to presume at the initial stages that the said explanation as true unless, they are rebutted or uprooted during the course of evidence and this court while exercising power u/S.482 Cr.P.C cannot distinguish and discuss the evidence to be placed before the Court at that stage itself. Further, it is contended by the learned counsel that the delay is also fully explained in the complaint. The truth or falsity of the allegations cannot be assessed at this stage. By plain reading of the FIR, the allegations are sufficient to constitute an offence, and then such proceedings cannot be quashed.

19. Looking to the allegations made, though there are some discrepancies and as argued by the learned counsel that there are some exaggerated versions, but if the totality of the allegations made in the statement is accepted, in my opinion, they attract the provisions alleged against the petitioner by the Police. At this

stage, I cannot bifurcate the allegations into several segments and hold that no offence is constituted at all on the basis of such allegations. Therefore, I am of the considered opinion that the first segment of the arguments addressed by the learned counsel cannot be accepted that even on plain reading of the FIR and statements of the victim, it does not disclose any facts at all which are sufficient to constitute any cognizable offence.

20. The second and third point as noted above, as per the guidelines of Bajanlal, run together and merely because the allegations made in the complaint are sufficient to constitute an offence are not sufficient for the court to permit the Police or the criminal court to continue the prosecution the other two riders as narrated in Bajanlal's case are also to be seriously enquired into by the Court, to ascertain;

21. Whether the allegations made in the FIR and the statement of the victim are so absurd and improbable and they have been made for the purpose of wrecking a private vengeance on the accused (petitioner herein) with a view to spite him and maliciously prosecute him.

22. In this regard, the learned counsel for the petitioner drawn my attention again to the FIR and subsequent statements of the victim and submitted that the nature of allegations and the facts of the case, shows that the victim has not at all disclosed the alleged sexual assault by the petitioner for four long years and even she has not disclosed to her husband and close kith and kin. He also brought to my notice that the delay in not disclosing the same creates a serious doubt as to the veracity of the statements and also there are long deliberations to concoct the story against the petitioner. He also brought to my notice that in the year 2013, victim has asked for two years rest and she disconnected herself from the math up to Jan. 2014. It is contended that if at all she has been ravished for such a long time from 2011 to 2013, why she should again go back to the math in order to surrender herself and to undergo the same humiliation. This is sufficient to hold that the entire story is a concocted story against the petitioner. Even he contends that the last incident alleged to have been taken place on 26.6.2014 between 6.30 to 7.30 p.m., but in spite of that, she never disclosed it to any body up to 27.8.2014 when she makes the statement before the learned Magistrate for the first time. Therefore, though some explanations are available but they are falsified by the intrinsically unbelievable discrepancies in the FIR. In this regard, he requests the court to look into certain rulings, where the victim has been falsely implicated by means of absurd unbelievable stories. Under such circumstances, the court has to protect the interest of the accused.

23. The learned counsel relied upon some decisions. Now, let me see what those decisions say:

"In a decision reported in Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , it is held that -

"From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

The abovesaid ruling clearly discloses that the uncontroverted allegations though the court cannot appreciate, but has to consider the special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit continuation of the prosecution. The ratio is that for the limited purpose the court can sift the evidence, as it cannot be expected even at the initial stage to accept all that the prosecution case as gospel truth."

24. He also relied upon another decision reported in AIR 2013 SC 1778 (Sic) between Rajesh Bajaj v. State of NCT of Delhi. Quoting the relevant portion of the judgment in Rajiv Thapar and Others Vs. Madan Lal Kapoor, , the Court observed that:--

"22. The issue being examined in the instant case is the jurisdiction of the High Court under section 482 of Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge. These are the stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under section 482 of the Cr.P.C., at the stages referred to herein above, would have far reaching consequences, in as much as, it would negate the prosecutions/complainants case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection.

The court also should see whether proceeding with the trial should result in abuse of process of the court, and would not serve the ends of justice."

25. The learned counsel also relied upon another decision reported in Priya Sharan Maharaj alias Yadavendra Parashar and others Vs. State of Maharashtra, , the sum and substance of the decision is:--

"It is true that a sexual offence is very easy to allege for a woman and very difficult to refute for the accused. Therefore, it is expected that immediately after the incident of molestation or rape, a report to the Police is lodged. The FIR in a criminal case is an extremely vital and valuable piece of evidence. On account of delay, the report not only gets benefit of the advantage of spontaneity; but danger creeps in of the introduction of colored version, exaggerated account or concocted story as are sult of deliberation and consultation. Delay in all respects like lodging of FIR, sending the copies of the FIR to Magistrate u/s. 157, Cr.P.C.,

disclosing incident immediately, recording statements u/s. 161, Cr.P.C in identification, examining the victim of rape or molestation by doctor etc., always considered fatal to the prosecution doubting the story put forth by the prosecution. In some case delay of few minutes or hours has been considered fatal....."

"In this case, there is unreasonable, inordinate or extra-ordinary delay in leveuing allegations of physical molestation or rape committed, by all the three prosecutrix against a saintly old man of 69 years of age who renounced the world and engrossed in spiritual world. The explanation as could be revealed from the statements of the prosecutrix that the disciples of Kripaluji Maharaj all the while stated that he is an incarnation of God and whatever happened with them, be taken as a "Prasad" or blessing of God and so not to disclose to any one, is difficult to digest as the chastity is the jewel of the Indian woman and no woman will consider the sexual intercourse against her will as "Prasad" or "blessing of God".

It also does not stand to reason that a saintly man who has thousand/millions of disciples all over India, direct his own disciple and in their presence will commit sexual intercourse with the pracharak of his cult. Though not in a similar situation but in somewhat identical manner, was before the Lordship in the case of Lawrence Kannandas Vs. The State of Maharashtra, as follows:

"Moreover, dwelling more upon the question relating to rape, it must be borne in mind that the story unfolded by the girl is intrinsically incredible. The accused is alleged to have taken the girl to the house of David who stays in one room with the six members of his family. There was hardly any room for the two additional guests to reside in the house. It is therefore inconceivable that the accused could have committed rape upon the girl in such a room in the presence of all others".

38. In the Indian milieu, sacrosanct traditions of chaste conduct restrains fair sex from the alleging exculpatory act; thereby compromising and inviting stigma to her character. Agonizing entreaties of a damsel in distress standing face to face with mortal danger of assault to her honor; if disclosed and reported spontaneously stands fully vindicated, but conduct at variance to known behavior is suspect to reason. The presumptive value of such conduct pales into probative insignificance.

Gravity of assault dictates spontaneous disclosure and to register the report with the authority. A disclosure and report though delayed if effected within reasonable time, however, needs supportable explanation, satisfying reason. Allegations wild and unfounded, incidentally; belated if given weight would have disastrous propensities of mischief and attract dangerous consequences; seriously jeopardizing honor of any citizen what of respectable and venerated citizens held high in esteems by civilized human society. Equally honor of no member of human civilization would be safe and secure if such wild allegations are upheld.

39. Considering the infirmities and improbabilities in the case indicated in the preceding para and considering the principles laid down by the Lordships the Supreme Court, according to me, the orders framing the charges against the applicants and rejecting the application for discharge, clearly indicates that the learned trial Judge did not do so with full and complete application of mind and due deliberation, considering various principles and guidelines indicated in several decisions some of which have been discussed above. For the reasons already alluded above, I find no difficulty in coming to the conclusion that while passing the order rejecting the application for discharge of the applicants/accused for the charges framed against them, the trial Judge has committed an error and, therefore, the order impugned is set aside. The applicant No. 2 thus, deserves to be discharged of the charges framed against him under Section 376, of the Indian Penal Code.

40. xxx

41. In the result, the instant revision application is allowed. The order framing the charges passed by the 3rd Addl. Sessions Judge, Nagpur (Shri Sabne) and the order rejecting the application for discharge, passed by the 2nd Addl. Sessions Judge, Nagpur (Shri Q.J. Sheikh) are set aside. The applicants/accused is discharged from all the charges framed against them. Their bail bonds stand cancelled."

26. The rulings clearly indicates that though the court for the limited purpose sift the evidence for the purpose of ascertaining the case of the prosecution but, those decisions are rendered considering the entire materials on record, after due investigation by the investigating agency and also at the time of framing of charges. The decisions also indicate that the stage of issuing process, framing of charges, are to be treated as similar stages, but in none of the decisions it is said that even before completion of the investigation the court can sift the materials and come to a definite conclusion that no purpose would be served if the investigation is permitted to be continued. Therefore it is to be born in mind that the truthfulness or falsity of the allegations is essentially pertaining to the realm of evidence and the same cannot be pre-judged at the initial stage. Though the court has said that it is very serious matter, the prosecutrix by making a statement to book somebody - which is serious in nature which invites 7 years imprisonment, the court has also observed that investigating officer shall submit a detailed report in the case, if she finds that the petitioner has been falsely implicated, he should take steps for booking the complaint for falsely implicating the petitioner. Though at paragraph 17, and 22, the court has said that the court can at the stage of issuance of process committal and at the time of framing of charges, can sift the materials for the purpose of administering justice. But, the court should be very careful in doing that, because in one way or the other prejudice the parties. Issuance of process, committal, and framing of charges, all those stages comes only after filing of the charge sheet. Therefore court may be in a position to sift the evidence only after all the cards are placed before the

court by investigating agency after thorough, meticulous and fair investigation.

27. The interim order passed by this court shows, this court never stalled the investigation, only this court has prevented the Police from interrogating and arresting the accused, therefore, the Police must have already investigated the major portion of the case, except the one left out as directed by this court. Therefore, looking to the above said circumstances, it cannot be said at this stage, even by sifting the materials on record, the court can definitely come to the conclusion that a false and concocted case has been foisted. If this court gives such an opinion, it would amount to rendering the final judgment exonerating the accused from all the allegations made against him. In this case, the statement of the victim also discloses that there are so many witnesses who are also disciples of the petitioner math, who have knowledge of the allegations made against the petitioner. When such being the case, it becomes too premature stage to come to the conclusion that there is no material available to investigate the matter any further.

28. The learned Advocate General for respondent 1 & 3 and also Sri. M.T. Nanaiah, learned counsel for R-2 have contended in this context that the petitioner math, is not like a corporate office. It is contended that the court at this stage, cannot give a finding as to whether the allegations made in the FIR and the subsequent statements are all false and whether there was any relationship of Guru and Shisya between the petitioner and the victim, and whether the said victim has surrendered herself due to the spiritual, religious and divine and the trust reposed on the petitioner. These are the facts to be unearthed by proper and detailed investigation.

29. In this regard, the learned A.G. relied upon an article about Destructive cults from Wikipedia, the free encyclopedia, which reads thus -

"Destructive cult" has generally referred to groups whose members have, through deliberate action, physically injured or killed other members of their own group or other people. The Ontario Consultants on Religious Tolerance limit use of the term to specifically refer to religious groups that "have caused or are liable to cause loss of life among their membership or the general public." Psychologist Michael Langone, executive director of the anti-cult group International Cultic Studies Association, defines destructive cults as "a highly manipulative group which exploits and sometimes physically and/or psychologically damages members and recruits. In the opinion of Benjamin Zablocki, a Professor of Sociology at Rutgers University, destructive cults are at high risk of becoming abusive to members. He states that this is in part due to members' adulation of charismatic leaders contributing to the leaders becoming corrupted by power. Zablocki defines a cult as an ideological organization held together by charismatic relationships and the demand of total commitment. According to Barrett, the most common accusation made against destructive cults is sexual abuse. According to Kranenborg, some groups are risky when they advise their members not to use regular medical care."

The learned A.G. submitted that the above said ideological observation shows that by means of religious power and divine influence, the cult can be used for the purpose of developing the illicit intimacy between Guru and his disciples. Therefore, whether that has been happened in this case has to be identified by means of investigation.

30. He also relied upon the rulings of the case reported in *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, wherein it was held that - ".....There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognized way back in *King Emperor v. Khwaja Nazir Ahmed*, where the Privy Council observed as under:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstance of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then.

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

In the said case, the Hon'ble Apex Court has held that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. It is the duty of the Police and the Police have bounden duty to investigate into the offence and file their report and the court later has to look into the contents of the report and if necessary take cognizance and deal with the matter. These two three adjudicatory functions should not be normally interfered with by this court. It is a statutory duty bestowed on the different authorities and that cannot be easily meddled with by the Court. The Court should not ordinarily infer anything in this regard.

31. The learned Advocate General has also relied upon an Article with reference to Gurus and Sexual Manipulation, *The Betrayal of Trust* reads thus:

"When a religion is transplanted from a conservative culture to a more experimental one, its leaders are no longer constrained by tradition. The West's looser mores make sexuality practically irresistible for foreign gurus from rigidly patriarchal cultures in which the sexes were separated and closely monitored.

The availability of sexy, adoring female disciples is a temptation few (if any) can resist. This chapter focuses on male gurus, as the sex scandals we are aware of involve male spiritual leaders.

Without deep cultural constraints against it, sex scandals go with the occupation of guru because of its emotional isolation and eventual boredom. Disciples are just there to serve and amuse the guru who, after all, gives them so much. The guru's temptation is exacerbated by the deep conditioning in many women to be attracted to men in power.

Having sex with one's disciples, whether secretly or openly, is a real betrayal of trust because -

(1) The guru is putting his own needs and pleasures first, which is exploitation. "Honoring" a disciple with sex is a form of unabashed dominance-how can a disciple refuse who is committed to serve and obey?

(2) Rewarding women for their sexuality taps into and reinforces deep lines of conditioning in them. Traditionally women's power has been related to sex. So women, especially the good-looking ones gurus seem to choose, generally have deep patterns that link their power and self-worth into their sexuality. Gurus, like fathers, are in a context that given them enormous power because of their disciples' needs, trust, and dependency. One reason incest is a betrayal of trust is that what a daughter needs from her father is a sense of self-worth not specifically linked to her sexuality. Sex with a guru is similarly incestuous because a guru ostensibly functions as a spiritual father to whom one's growth is entrusted. Having sex with a parental figure reinforces using sex for power. This is not what young women (or men) need for their development. And when the guru drops them, which eventually he does, feelings of shame and betrayal usually result that leave deep scars.

(3) Sexuality with disciples (whether overt or covert) sets up hierarchies of preference where disciples compete for status through who is attracting the guru. If covert, it also creates lies and secrecy among disciples."

32. He submits that it is not un-common in the realm of relationship between Guru and his disciples i.e., the betrayal of relationship and also development of sexual relationship with each other. Persuasion, by misusing of religious and divine preaching's or threatening with divine displeasure, to attract the female and mesmerize them to surrender themselves to Gurus lust are also happening in recent days. Whether such things have actually happened in this case has to be investigated by the Police in order to bring out the real truth before the Court. I do not want to give any opinion about the above said passages relied upon by the learned Advocate General, but the argument of the learned Advocate General cannot be easily brushed aside and in my opinion also, the factual aspects are closely related to the above observations which requires to be investigated in detail.

33. The learned counsel for the petitioner strenuously contended that there is inordinate delay in lodging the complaint and the delay results in concoction of the case. In this particular case, for a period of more than four years the petitioner has not disclosed anything about the illegal acts of the petitioner. It shows that only after the lodging of the complaint against the victim and her husband immediately as a counter-blast they have created a story of alleged rape. Therefore, such concoction has to be very seriously viewed by the court. In this regard, learned counsel for the petitioner relied upon a ruling reported in *Thulia Kali Vs. The State of Tamil Nadu*, wherein it is held by the Hon'ble Supreme Court as under:

"The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained."

The above said decision of course considers the delay as a serious aspect in criminal cases. If delay is not properly explained, the court has to doubt the prosecution case itself. The delay results in embellishment, which may be a creature of afterthought and it may lead to introduction of a story which may also sufficient to draw an inference that the case may be concocted.

34. Countering the above submissions the learned Advocate General submitted that in the FIR if there is no explanation at all about lodging the complaint in a delayed manner, then on perusal of the entire FIR, court may draw an inference of concoction but at pages 10 to 12 of the statement of the victim recorded under Sec 161 Cr.P.C., there is an explanation given by the victim the reasons for the delay. The threat of divine displeasure and after the several incidents i.e. to say even after rejoining the math after lapse of 6 months the same previous acts of the petitioner continued. Therefore, she was perturbed and in this regard she has also taken treatment in NIMHANS (Mental health) hospital and even then they did not venture to lodge a complaint, as the petitioner was undergoing Chaturmasa. Whether this explanation is plausible and acceptable has to be tested by means of thorough investigation and during the course of evidence after the victim is subjected to cross-examination. If some explanation is available that cannot be ignored by the court at the threshold. In this context, the learned Advocate General also relied upon a Ruling reported in *State of Punjab Vs. Ramdev Singh*, and *Ramdas and Others Vs. State of Maharashtra*, wherein the Apex Court laid down the following guidelines:--

"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as was done by the High Court in the present case."

The Supreme Court in the abovesaid decisions has observed that the delay itself is not sufficient to throw out the entire case of the prosecution. The delay has to be considered according to the explanation whether the same has been satisfactorily explained or not. Even if the delay is not explained at the preliminary stages if after entire investigation, if all the circumstances are viewed the court may also assess whether by way of other circumstances the delay is properly explained.

35. In view of the above said submissions and rulings cited by the learned counsel and on facts, this court while dealing with the matter under Section 482 cannot give any finding whether the explanation given for the delay is properly explained or whether such delay has resulted in embellishment or concoction of a story against the petitioner or whether such explanation is improbable. It is to be noted that at the time of exercising powers under Section 482 Cr.P.C., the court cannot go in detail with regard to the factual aspects of the case for to find out the truth or falsity of the explanation given and comparing the same with other parts of the First Information Report and the statement of the victim. That would also amount to appreciation of the materials on record rather than sifting the materials, even for limited purpose. Therefore, the High Court should be extremely cautious and slow even while considering the matrix of the case for any purpose in favour of either of the persons. If the court does that act, it would definitely prejudice the parties to the proceedings. The test that has to be applied by the court is that, the fact stated against the accused, has to be accepted as per the averments in the FIR or in the complaint or in the statement of the victim. It is not permissible at the stage of quashment of the criminal proceedings, even appreciating the facts even for limited purpose in a summery manner. If the instances narrated in the FIR plainly explains the situation those incidents and explanation have to be taken on their face value, though they may give rise to different colours on looking at them with different perceptions. Though in this particular case there is delay, the same is subjected to the explanation offered. The delay has to be considered by the investigating officer at the time of investigation in order to ascertain whether the other materials collected by him supports the case of the petitioner and that because of the delay the case has been concocted against the petitioner. This can only be done by means of thorough and meticulous investigation. Therefore, the delay itself, in

my opinion, is not sufficient at this stage to quash the proceedings holding that the entire story of the victim is concocted.

36. The learned Senior Counsel Sri. B.V. Acharya argued with all force that if the prosecution is continued, unnecessarily the status and reputation of the petitioner will be maligned. Even if the entire allegations in the FIR and the statements of the victim are translated into evidence that clearly goes to show that the victim herself has shown that she may be a consenting party to the incident as stated by her. The learned counsel very carefully made the above submission, without admitting any relationship between the petitioner and the victim, he only relying upon the face value of the FIR and the statement of the victim. It is further submitted that a complaint is lodged against the victim and her husband; that they demanded a Rs. 3.00 crores from the petitioner-math and that they threatened, if that amount is not paid, a false complaint would be lodged against the petitioner making allegations of the sexual scandal against the petitioner. Therefore, he submitted that these intrinsic discrepancies in the FIR coupled with the case filed against the victim and her husband shows that the case is filed with, a mala fide intention to bring down the status and reputation of the petitioner and also as a counter blast. In this regard, learned counsel has relied upon a decision in the case of Jose Thettayil Vs. Station House Officer, , wherein it is observed thus:--

"14. However, of late, the Indian society seems to have shed its orthodox nature and appear to have become more progressive and adventurous. In the fast moving and developing world, naturally changes have to occur and that must happen in the social and cultural fields also. Traditional moral and ethical values are on the decline. Suffice is to say that living in relationship and such other activities have received both statutory and legal recognition. So as of now, it may not be possible to apply the standards which were once applicable to the conservative and orthodox Indian society.

xxxx xxxx xxxx xxxx

107. Before parting with this matter, a very disturbing trend that has emerged in criminal jurisprudence needs to be mentioned. Of late, the investigation of any case does not seem to end and it goes on endlessly adding provisions of I.P.C. and more and more accused, some of them based solely on the confession of an accused. In some other cases any numbers of additional statements are taken from the complainant and then more and more offences get added and so also number of the accused. A stage has reached where anybody could be booked for any offence eroding the sanctity attached to investigation. It is even more curious to note that any numbers of final reports are also being filed in cases labeling them as split charges. It is time that authorities concerned bestow their attention to this matter so that the system can retain its credibility and acceptability."

In another decision reported in Prof. S.N. Hegde Vs. The Lokayukta and Others, ,

wherein it is observed thus:--

"72. Bhagavad Gita which is considered to be the essence of Vedas and Upanishads has the following verse in Chapter II (Verse 34):

"Akirthim Chaapi Bhutaani Kathaishyanthi Thevyayam Sarnbhavithasya Chaakirthi Maranaadaapi Richyathe"

Translated into English, it runs as follows: Moreover men will ever tell of your disgrace, and to a man of honor ill fame is worse than death.

Commenting on the above words Maharishi Mahesh Yogi in his commentary has stated that those who have enjoyed goodwill and fame in society, lose it, they suffer shame and misery, which is worse than death. Loss of renown for a once famous man is more than death to him. The underlying principle of good fame in society is that when a man constantly does good he becomes a centre of harmonious vibrations which, enjoyed by the people around him, naturally create warmth and love in their hearts. That is why he is described in glowing terms by all. In this way the good fame of a man is the criterion of his goodness, and ill fame the criterion of his badness. No one who is good could possibly acquire ill fame. Max Muller commenting on the aforesaid words in Gita has stated that all beings, too, will tell of your everlasting infamy; and to who has been honored, infamy is (a) greater (evil) than death."

37. Countering the above said argument, the learned Advocate General submitted that it is not only the status of the petitioner that counts but, the status of the victim as well. The court has to take notice that whether an ordinary prudent lady can make such a wild allegation against a person who has a high reputation and status in the society with mass support and is sound on all aspects. He further submits that the said lady is a Graduate, married, having two unmarried daughters, and living out of doing some work like singing, and her husband is also an employee in a Company. When such a situation is there whether unnecessarily she could have taken the risk of her life, her character and putting her entire future life and life of her unmarried daughters at stake.

38. The above said arguments if they are taken in the right perspective, in my opinion, if the court gives any opinion with regard to the said allegations, it amounts to giving an opinion either in favour of the petitioner or in favour of the victim. In order to give such finding the court has to analyze the materials on record to come to a conclusion that who is at fault and who is moving on the right path. The status and as well as the reputation is the thing which has to be considered by the court after giving a very thoughtful consideration to the facts and appreciating allegations and counter allegations made against each other. It is not that at this threshold stage the court can discuss the entire fact and give a verdict which in my opinion amounts to writing a judgment in favour of one of the persons without any opportunity to the party to prove the allegations. I am conscious of the principles laid down in the above said two cases to the effect that unnecessarily a person's status and reputation should not be maligned and

the loss of status or character assassination virtually amounts to death of a person, and the court in rarest of rare case can interfere at the threshold and prevent the further damage to the status and reputation of the parties to the proceedings. It should also to be borne in mind that the persons howsoever high they may be they are subjects of the country and the law is above them all, the citizens are equal before the law. Equal treatment and equal opportunities to the citizens of the country are the legal and moral fiber of our ambitious Constitution. When the materials on record are inter-twined with each other, where the court cannot in isolation pick and choose some of the portions of the materials on record and give its finding, then it becomes very difficult for the court to draw inferences at the threshold. If the court is of the opinion that the factual matrix alleged and counter-alleged by the parties need not be subjected to proof and they are conclusive, and the court is of the opinion, no opportunity need be given to any of the parties to prove their case and there is absolutely no further evidence is required, then only the court can with all certainty and surety can dispose of such issues. But, here, the reputation is not only at stake so far as the petitioner is considered but also the victim is concerned. Therefore, this court cannot partially decide the issue. In this regard also I am of the opinion; the proceedings cannot be quashed at this stage.

39. The learned Senior Counsel has with all commitment submitted before the court that the surrounding circumstances of the case if it is seen in proper perspective that shows that after the Gokarneshwara Temple Administration is handed over to the petitioner, some invisible force has been working to un-throw the petitioner from the math. There are so many cases which are pending against the petitioner and his math and some cases have also lodged by the math against some disgruntle fellows in order to safeguard and protect the interest of the math. He further submitted that the pendency of the other criminal cases and Public Interest Litigation which has been disposed of in Writ Petition No. 36998/2013 dated 04.08.2014 on cost of Rs. 1.00 lakh shows that this complaint is also an off-shoot of the vengeance of some invisible force.

40. I have carefully perused the records in this regard. Of course, there are certain cases which are pending in different courts. In Crime No. 27/2010 a case is registered against some accused persons alleging morphing and making compact discs with an intention to tarnish the image of the petitioner. Another document produced before the court shows that on 21.07.2014, a Ramakatha Performer by name Kum. Deepika received a threatening call from some unknown persons with reference to her performance in Ramakatha and a case is registered on her complaint in FIR No. 314/2014. Another case is also registered by the Camp Manager of the petitioner-math on 06.08.2014 on the allegation that he also received a threatening call with reference to the math and in that regard, a case is also registered in Crime No. 337/2014. Apart from the above, a writ petition by way of PIL filed by one NGO organization called "Asthra" and also by Gokarna Samrakshna Samithi in No. W.P. 36998/2003. The order dated 04.08.2014 discloses the division bench of this court comprising of Hon'ble Chief

Justice dismissed the writ petition as frivolous filed against the petitioner-math on cost of Rs. 1.00 lakh. In this background, it is also seen that a complaint is lodged against the victim and her husband in Crime No. 342/2014 on 17.08.2014 which is already discussed supra.

41. Of course, the above said surrounding circumstances of the case filed against the math and also cases filed by the math and its disciples, against some persons definitely discloses that all was not well with the math and some unpleasant situations have been taking place against the math. But, whether that itself is sufficient to come to a definite conclusion that the victim has got any connection with that unknown force, which is alleged to have been working against the petitioner and the petitioner's math. Unless the court has got sufficient, unequivocal, unique and uncontroverted materials in favor of the petitioner and against the victim and her husband, it cannot with all certainty say that the FIR and statement of the victim against the petitioner are all false, nothing but false, invented with an intention to wreck vengeance against the petitioner and the math. The relationship between the victim and the said unknown force working against the math has to be thoroughly and meticulously ascertained during the course of the investigation. Therefore, I am of the opinion the above ground at this stage is not a perfect and indefeasible ground to quash the entire proceedings. Though some decisions have been cited in this regard, I do not want to over-burden this decision by citing those decisions. It is sufficient to say that while exercising the powers under Section 482 the court does not function as a court of appeal or revision or the trial Court in order to come to any definite conclusion on the basis of the factual matrix of the case. If the court is disabled from coming to a definite conclusion in such circumstances the court should not exercise powers under Section 482 to stifle the legitimate prosecution.

42. Before concluding it is just and necessary to note here the purpose and object of allowing the prosecution to continue for the investigation. What is the purpose and object of investigation? It goes without saying that the purpose of investigation is unearthing and surfacing the truth or falsity of the allegation and counter-allegations made against each other by the complainant as well as the accused. This can only be done by fair, impartial, meticulous and efficient investigation. The investigating officer should always thrust for bringing out the truth before the court by placing all the materials collected unmindful of the result of the case, whether those materials favour the accused or the victim. If the investigating officer finds that the allegations are falsified during the course of investigation, he should not only exonerate the accused by filing appropriate report to the court, but also as a sincere and honest public servant take necessary stringent action against the person who instituted such false case against the accused to bring the said person to books, the law is wide and strong enough for such actions. The investigating officer should also bear in mind that he should exercise sound discretion while arresting/interrogating the accused. The arrest of the accused is within the domain of the investigation, and vests with the sound discretion of the investigation officer. Such powers have to be

exercised with all care caution depending upon the facts and circumstances of each case. The Investigation officer has to give equal importance and opportunity to the victim and accused to place all the materials to prove their cases which is the fundamental basic principles of jurisprudence otherwise right to fair investigation to both the parties will be jeopardized on the other hand, it also violates the principles of natural justice.

43. Looking to the legal aspects and factual aspects as discussed above it is clear that while exercising the powers under Section 482 of Cr.P.C the High Court being the highest court of the State should normally refrain from giving prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the court and the issues involved whether factual or legal or of the heavy magnitude, and cannot be seen in the true perspective without being the case investigated. The court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyze the case to any extent in the light of the probabilities, improbabilities whether the case ends up in conviction whether there are only bleak chances of conviction etc. It would be erroneous to assess the materials and give a finding it virtually amounts to exoneration of the accused without a trial and evidence. Under the above said circumstances I am of the opinion that the matter requires to be thoroughly investigated by an efficient investigating agency. I am told by the learned Advocate General now the State has transferred the present case and all the connected cases to be investigated by CID the premiere investigating agency of the State. I hope and trust the investigating agency will make its entire endeavor to bring out the truth by fair, impartial, meticulous and efficient investigation. Therefore, I do not find any strong reasons to quash the proceedings by interfering with the investigation.

44. Though the learned Advocate General and Sri. M.T. Nanaiah, learned counsel, brought to my notice some of the incidents taken place subsequent to granting of the interim order that is to say some threatening calls to the complainant, and suicide committed by one of the brothers of the victim due to the threat by the petitioner etc. as those allegations have been sternly denied and countered by the learned counsel for the petitioner. In my opinion, those are not relevant facts to be considered for the purpose of disposal of this case. Hence I am reluctant to give any deliberations on those allegations.

45. Before parting with the matter, the learned Advocate General brought to my notice some serious error committed by the learned Judicial Magistrate of Honnavar. It is submitted that as soon the victim in this case was produced as one of the accused in Crime No. 342/2014 before the Magistrate, Honnavar, the victim as an accused in the said case filed a written complaint making allegations against this petitioner and the said complaint was ordered to be kept in a sealed cover. This is an untold and unknown procedure followed by the learned Magistrate.

46. I have also carefully perused the order sheet of the trial Court which I have secured, it discloses that on the date when the accused(victim in this case) was produced before the Magistrate particularly on 27.8.2014, it is mentioned in the order sheet that the accused has filed a complaint, the Judge noted that, it should be taken on file and ordered to be kept in safe custody.

47. There is no reason for the Magistrate to keep the said document in safe custody because it is not the statement of the complainant in that case or the statement under Section 164 of Cr.P.C as mentioned by the learned Magistrate it is a complaint made against the petitioner by the victim who was arraigned as an accused in the said case. The learned Magistrate ought to have followed the procedure when any complaint is lodged under Section 200 of Cr.P.C. making certain allegations which constitute any cognizable offence. The Magistrate on going through the averments in the said written complaint by exercising the powers under Section 190(a) Cr.P.C. should have taken cognizance of the offence and by examining the complaint, and her witnesses if any, and after providing opportunity to the complainant, passed appropriate orders either under Section 203 or under Section 204 of Cr.P.C. If for any reason the learned Magistrate is of the opinion that some investigation by the police is required she should have referred the matter to the Police under Section 156(3) of Cr.P.C. for investigation and report and acted upon such report later. But, the learned Magistrate adopted a very strange procedure which is unknown to criminal jurisprudence. Therefore, it is just and necessary to direct the learned Magistrate, Honnavar, hereinafter to take care and follow recognized procedure contemplated under the Code under peculiar circumstances of each and every case. In this particular case, the written complaint given by the victim (accused in Crime No. 342/2014) now need not be treated as a complaint because of the simple reason that on the complaint lodged by the daughter of the victim the police have already registered a case in Crime No. 164/2014 on the file of Girinagar Police which is now said to have been transferred to CID. The learned Magistrate has to transmit the said statement of the victim to the investigating officer on request and it should be treated as part and parcel of 161 statement recorded by the police of the victim. With these observations, I am of the opinion, the petition is devoid of merits and the same is liable to be dismissed.

48. The observations made in the body of this Order is only restricted to disposal of this petition and it is made it clear that any observation should not persuade the Trial Court or the investigating officer in any manner. They have to deal with the matter according to their own perception of facts and law.

49. I place on record the very erudite, enlightening and knowledgeable assistance given by the Sri. B.V. Acharya, learned Senior counsel, Prof. Sri Ravivarma Kumar, the learned Advocate General and Sri. M.T. Nanaiah and Sri. Shankarapa, learned counsels. Hence, I pass the following order:

"The Writ Petition is dismissed. Interim order granted earlier is hereby vacated."