
(2011) 11 GAU CK 0007
In the Gauhati High Court
Case No : Criminal Rev. P. No. 2 of 2011

Thokchom Jadumani Singh

APPELLANT

Vs

State of Manipur and Another

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Constitution of India, 1950 — Article 20, 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 155(2), 156, 156(1)
Penal Code, 1860 (IPC) — Section 108, 121, 121A, 34, 406
Unlawful Activities (Prevention) Act, 1967 — Section 17, 21

Citation : (2012) 3 GLT 136

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S. Biswajit, for the Appellant; Th. Ibohal, Senior PP., for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—By this revision petition u/s 482 of the Cr.P.C. filed by the petitioner, Shri Th.Jadumani Singh, against whom FIR No. 102 (4) 2008 Thoubal P.S. u/s 121, 121-A IPC and 17, 21 UA(P)A Act, 2004 (sic 1967) had been registered suo-motu on the basis of information collected by the O/C himself, is praying for quashing the FIR, i.e. FIR No. 102 (4) 2008 Thoubal P.S. on the inter alia grounds that (1) the O/C, Thoubal Police Station registered the said FIR without fulfilling the pre-requisites for registration of FIR provided u/s 157 of the Cr.P.C; (2) the FIR is only a cryptic information from somebody who does not disclose any authentic knowledge about the commission of cognizable offence and the information or/complaint basing on which the above FIR is registered is frivolous, vexatious and oppressive; (3) the allegations made in the report, i.e. the FIR, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused-petitioner; (4) the un-controverted allegations made in the FIR and the evidence collected in support of the FIR do not disclose the

commission of any offence or make out a case against the accused-petitioner; and (5) the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient proof for proceeding against the accused-petitioner and also there shall be abuse of process of court. Our democratic polity under the Constitution is based on the concept of "rule of law". Law is supreme; everyone either individual or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. Nobody has unfettered discretion in our democratic polity, so also the Police Officer has no unfettered power for registration of FIR/criminal case against the citizen of India. It needs no emphasis that no one can demand absolute immunity if he is wrong and claim unquestionable right and unlimited power exercisable up to unfathomable cosmos. Any recognition of unfettered power of the Police to register FIR against any person will tantamount to recognition of "divine power" which no authority on earth can enjoy. [Ref: State of Haryana and others Vs. Ch. Bhajan Lal and others,].

2. The relevant facts giving rise to this revision petition have to be recapitulated in order to enable me to give my reasons for the finding which I will be arriving at on the interpretation of certain provisions of the Criminal Procedure Code (Cr.P.C), the Unlawful Activities (Prevention) Act, 1967 and Constitution of India.

3. An information was lodged by the Officer-in-Charge, Thoubal P.S., on 27.04.2008 at 12.15 p.m. for an occurrence which took place on 13.06.2003; therefore, the information was lodged about 5 years after the occurrence. The main contents of the said FIR are that the accused-petitioner has established one Petrol Pump under the name and style "Sorojini Filling Station" with the terrorist funds raised by the unlawful organization namely, PLA (Peoples Liberation Army). The S/S Finance Secretary of the PLA namely Balaram @ Suresh Bhaiya is a close friend of the accused-petitioner. The accused-petitioner does not have enough money to raise huge funds for the said Petrol Pump on the piece of land covered by CS Dag No. 5898 measuring an area of 0.4733 hectare just adjacent to N.H.39. The said land is recorded in the name of the wife of the accused-petitioner namely, Sorojini Devi. The value of the said land under CS Dag No. 5898, according to the local market prevailing in the year 2005 would be Rs. 25,50,000/- (Rupees twenty five lakhs fifty thousand) as assessed by the Sub Deputy Collector, Thoubal. The said land was purchased from one Kh.Shatpa and Kh.Ibomcha, s/o Kh.Angou of Khangabok Khullakpam Leikai for a consideration amount of Rs. 50,000/- vide registration No. 472 dated 13.06.2003 by concealing the exact purchase amount to evade the non-judicial stamp fee and registration fee. The accused petitioner has shown a sum of Rs. 32 lakhs as loan from the SBI Thoubal Branch against the value assets such as cash in hand Rs. 10 lakhs, immovable properties- Rs. 10 lakhs, stock business-Rs. 15 lakhs, gold ornaments-Rs. 50,000/- and movable assets-Rs. 40 lakhs. On the basis of the said information a regular case i.e. FIR case No. 102 (4) 2008 Thoubal RS for the offences punishable u/s 121, 121-A IPC and Sections 17, 21 UA(P) A Act 2004

(sic) 1967 had been registered.

4. Section 121, 121-A of the Indian Penal Code (IPC) read as follows:

121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.- Whoever, wages war against the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

121 A. Conspiracy to commit offence punishable by Section 121.- Whoever within or without India conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State Government, shall be punished with imprisonment for life or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Under Section 121 of the IPC, whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life and shall also be liable to fine.

5. The evidence required to establish a case u/s 121 IPC must be directed to the proving of the following points;

(1) that the accused "wage war" or attempt to do so or abet the same;

(2) that such war was against the Government of India.

Section 121 is remarkable for the fact that it has specifically provided for the offence of abetment of waging war.

6. Section 108 of the IPC define the meaning of "Abettor":- A person abets an offence, who abets either the commission of an offence or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

7. It is the mandate of Article 20 of the Constitution of India that no person shall be convicted of an offence except for violation of a law in force at the time of commission of the act, charge and offence nor he be subjected to a penalty greater than that which might have been inflicted under the law in force and at the time of commission of the offence. Therefore, a person shall be convicted only for the offence under the law in force at the time of commission of the act, charge and offence; and also that any person cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. In the case in hand, the occurrence is alleged to have been taken place on 13.06.2003.

8. Sections 17 and 21 of the of the Unlawful Activities(Prevention)Act, 1967 at the time of occurrence i.e. in 2003 read as follows:

Section 17. Prosecution for offences under this Act.- No court shall take

cognizance of any offence punishable under this Act except with the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf.

Section 21 Power to make rules.-

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) Any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately following the successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

9. It is fairly well settled that penal statute which create offences or which have the effect of increasing penalties for existing offences will only be prospective by reason of the constitutional restrictions imposed by Article 20 of the Constitution. Therefore, even an act create an offence, it will bring into its fold only those offenders who committed all the ingredients of the offence after the Act come into operation. For this settled position of law, it may not be required to refer to different decisions of the Apex Court. It would be sufficient to refer to the decisions of the Apex Court in

(1) West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras,

(2) State of Maharashtra Vs. Kaliar Koil Subramaniam Ramaswamy, ,

(3) Soni Devrajbhai Babubhai Vs. State of Gujarat and others, ,

(4) Kalpanath Rai Vs. State : AIR 1998 SC 201 and R.V. Griffiths (1891) 2 QB 145 p. 148 [Lord Coleridge, C.J]

10. The Unlawful Activities (Prevention) Act, 1967 had been amended by the "Unlawful Activities (Prevention) Amendment Act, 2008 which came into force on 31.12.2008. u/s 6 of the Amendment Act, 2008 the old Section 17 of the Unlawful Activities (Prevention) Act, 1967 has been substituted by new Section 17 which read as follows:

17. Punishment for raising funds for terrorist act. - Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

11. Section 21 of the Unlawful Activities (Prevention) Act, 1967 which has been quoted above, was substituted by the new Section 21 under the Unlawful Activities (Prevention) Amendment Ordinance 2004. New Section 21 reads as follows:

Section 21. Punishment for holding proceeds of terrorism. Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

The Unlawful Activities (Prevention) Amendment Ordinance 2004 had come into effect on 21.09.2004. Therefore, the amended Sections, 17 and 21 of the Unlawful Activities (Prevention) Act, 1967 are not applicable in the instant case as the occurrence took place on 13.06.2003.

12. The present FIR is required to be looked into for deciding the present petition;

Date and hour when reported

Place of occurrence & distance from Police Station

Date of dispatch from police station

Dtd. 27.4.2008 at 12.15 p.m.

At M/S Sorojini Filling Station, Khangabok near N.H. 39 about 4 kms South

29.42008

N.B.: A first information must be authenticated by the signature, mark of thumb impression of informant and attached by the signature of the officer recording it.

Name & residence of informant/complainant

Name & residence of accused

Brief description of offence with section and of property carried off, if any

Steps taken regarding investigation, explanation of delay in recording information

Result of the case

Insp. Kh. Sarat Singh O.C/Thoubal P.S.

Th. Jadumani Singh of Khangabok Mayai Leikai, Thoubal District

Waging war against the Govt. Extortion & holding proceeds of terrorism. u/s 121/121A IPC & 17/21 UA (P) A Act, 2004

Sri Jogeschandra Haobijam, M.P.S., S.D.P.O., Thoubal, may kindly take up the case for investigation

O.C/Thoubal P.S

DL 27.4.2008

Signed: (Inspector Kh. Sarat Singh)

Designation: O/C

Thoubal P.S.

Dt. 27.4.2008

During the course of inquiry, it has come to light that Shri Moirangthem Balaram @ Suresh Bhaiya, S/S Finance Secretary of PLA of Khangabok, Thoubal District, which is a terrorist organization is a very close friend of Shri Th. Jadumani Singh of Khangabok. The Terrorist fund raised by the PLA is handled by Shri Moirangthem Balaram @ Suresh Bhaiya, S/S Finance Secy of PLA and out of the terrorist fund raised by the PLA Shri Th. Jadumani Singh has established one petrol pump at Khangabok under the name of Sorojini Filling Station as sanctioned vide Order No. GDO/New R.O. Khangabok dated 24.11.2008 from IBP Co-Ltd accordingly, the First Information Report is quoted hereunder:

FIRST INFORMATION OF A COGNIZABLE CRIME REPORT u/s 154 CRIMINAL PROCEDURE CODE AT POLICE STATION

Sub Division: Thoubal District: Thoubal FIR No. 102(4) 08 TBLP.SU/S121/121-AIPC and 17/21 UA(P)A Act, 2004 (sic 1967) date & hour of occurrence: 13.6.2003, time not mentioned.

by Sr. Divisional Manager.

During further inquiry, it is also established that for opening the said petrol pump a land measuring an area of 0.4733 hectare of land located just near the NH-39 at Khangabok was purchased from one Kh. Satpa and Kh. Ibomcha S/o Kh. Angou of Khangabok Khullakpam Leikai for a consideration of Rs. 50,000/- vide registration No. 472 dtd. 13.6.2003 by concealing the exact purchase amount to evade the non judicial stamp fee and registration fee. But the market value of the above land is Rs. 25,50,000/- as assessed by the SDC/Thoubal (Copy

enclosed).

During inquiry it is also established that Shri Th. Jadumani Singh does not have enough means to raise such huge amount for procuring such precious land near NH-39 without the help of PLA through Shri Suresh Bhaiya. But he has shown a sum of Rs. 32 lakhs as loan from SBI, Thoubal against the value of assets such as cash in hand Rs. 10 lakhs, immovable properties Rs. 10 lakhs, stock business-Rs. 15 lakhs, gold ornaments Rs. 50,000/- and movable assets Rs. 40 lakhs (copy of loan sanctioned order is enclosed).

At the moment, the petrol pump is transacting regularly. The total amount of the petrol pump may be estimated at Rs. 61 lakhs.

Therefore, it is necessary to register a regular case punishable U/S 17/21 UA(P) A Act 2004 (sic 1967) against Shri Th.Jadumani Singh and his associates for raising the PLA fund and also for holding proceeds of terrorism to wage war against the Govt. by hatching conspiracy with the PLA cadres punishable u/s 121 and 121A IPC.

Hence, a suo-motu case under FIR No. 102 (4) 08 TBLP.S.u/s 121/121A IPC and 17/21 UA (P) A Act, 2004 (sic 1967) has been registered against the accused person for investigation.

Sd/-

(INSP.KH.SARAT SINGH

Officer-In-Charge Thoubal Police Station."

13. For the said land i.e. land under CS Dag No. 5898 the concerned Sub Deputy Collector, Thoubal issued a valuation certificate dated 16.10.2008 that the present market value of the said land would be Rs. 3,50,000/- (Rupees three lakhs fifty thousand) in the year 2008. There is also another valuation certificate of the said land covered by C.S. Dag No. 5898 issued by the Sub Deputy Collector, Thoubal on 08.06.2006 that value of the said land is estimated at Rs. 28,50,000/- (Rupees twenty eight lakhs fifty thousand) according to the local market rate fluctuation from time to time.

14. For deciding the ground No. 1 mentioned above, it is required to have a quick glance of Section 157 of the Cr.P.C, which read as follows:

157. Procedure for investigation.-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts

and circumstances of the case, if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

15. u/s 154 of the Cr.P.C, the Officer-in-charge of the Police Station to whom an information relating to commission of a cognizable offence is given, orally or in writing, should be entered in a Book to be kept by such officer in such forms as the State Government may prescribe which form is commonly called as "First Information Report" and such act of entering information in the said form is known as registration of the crime or a case. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned Police Officer cannot embark upon an inquiry as to whether the information led by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable. Section 157(1) require the O/C of Police Station, who "from the information received or otherwise" has reason to support the commission of an offence i.e. cognizable one which he is empowered to investigate u/s 156 to forthwith send a report to a Magistrate empowered to take cognizance of such offence upon a Police report and either proceed in person or depute any one of his subordinate officer not below such rank as the State Government may by general or special order prescribed in this behalf to proceed to the spot to investigate the facts and circumstances of the case.

16. On conjoint reading of Section 156, 157 and 159 of the Cr.P.C., it is clear that if the Police officer has reason to suspect the commission of a cognizable offence he must either proceed with the investigation or shall cause an investigation to be proceeded with his subordinate, that in case; where the Police officer, see no sufficient ground for investigation he can dispense with the investigation altogether; that the statutory right of the Police Officer to investigate a cognizable offence is subject to the fulfillment of prerequisite conditions

contemplated in Section 157(1); the condition is that the Officer-in-charge of the Police Station, before proceeding to investigate the fact and circumstances of the case should have "reason to support" the commission of an offence who is empowered u/s 156 to investigate.

17. The Apex Court in *State of Haryana & Ors Vs. Bhajan Lal & Ors* : 1992 Supp (1) SCC 335 held that the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. The commencement of the investigation by a Police officer is subject to two conditions, firstly, the officer who has the reason to suspect the commission of cognizable offence as required by Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Code. Para 42, 43, 44, 45, 46, 47, 48, 51 and 52 of the SCC in *Bhajanlal's* case (supra) read as follows:

42. The expression "reason to suspect" as occurring in Section 157(1) is not qualified as in Section 41(a) and (g) of the Code, wherein the expression, "reasonable suspicion" is used. Therefore, it has become imperative to find out the meaning of the words "reason to suspect" which words are apparently clear, plain and unambiguous. Considering the context and the object of the procedural provision in question, we are of the view that only the plain meaning rule is to be adopted so as to avoid any hardship or absurdity resulting therefrom and the words are used and also to be understood only in common parlance. We may, in this behalf, refer to a decision of the Privy Council in AIR 1939 47 (Privy Council) wherein Lord Atkin said as follows:

[W]hen the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intention... It therefore appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or the accused.

43. The word "suspect" is lexically defined in Webster's Third International Dictionary as follows:

Suspect-to look up at, suspect, the act of suspecting or the condition of being suspected... to have doubts of; be dubious or suspicious about; (2) to imagine (one) to be guilty or culpable on slight evidence or without proof... (3) to imagine to be or be true, likely or probable; have a suspicion, intimation or inkling of.

44. In *Corpus Juris Secundum* (Vol.83) at page 923 the meaning of the word "suspect" is given thus:

The term "suspect", which is not technical, is defined as meaning to imagine to

exist, have some, although insufficient, grounds for inferring; also to have a vague notion of the existence of, without adequate proof; mistrust. It has been distinguished from "believe".

45. In the same volume, the expression "suspicion" is defined at page 927 as follows:

"The act of suspecting or the state of being suspected, the imagination, generally of something ill; the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all...

46. Words and Phrases (Permanent Edition 40-A) at page 590, the word "suspicion" is defined thus:

"Suspicion" implies a belief or opinion as to guilt, based on facts or circumstances which do not amount to proof. *Scaffido v State*: 254 NW 651. The state of mind which in a reasonable man would lead to inquiry is called mere "suspicion". *Stuart v Farmers' Bank of Cuba City*: 117 NW 820.

47. Again at page 591 the said word is expounded as follows:

"The word "suspicion" is defined as being the imagination of the existence of something without proof, or upon very slight evidence, or upon no evidence at all. *Cook v Singer Sewing Machine Co*: 32 P 2d 430, 431:138 Cal App 418.

See also (1) (AIR 1946 123 (Privy Council) ; (2) *United States v Cortes*: 66 L Ed 2d 623, 628 II A(3) and (3) *Dallison v Caffery*: (1964) 2 All ER 610 : (1965) 1 QB 348.

48. One should not lose sight of the fact that Section 157(1) requires the police officer to have reason to suspect only with regard to the commission of an offence which he is empowered u/s to investigate, but not with regard to the involvement of an accused in the crime. Therefore, the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the first information report as well in the annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at that stage the question of adequate proof of facts alleged in the first information report does not arise. In this connection, we would like to recall an observation of this Court made in *State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another*, while interpreting the expression "reasonable belief. It runs thus: (SCC p.369, para 4).

Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the

officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances." 51. As pointed out in the earlier part of this judgment, Section 157(1) is qualified by a proviso which is in two parts (a) and (b). Clause (a) of the proviso is only an enabling provision with which we are not very much concerned. However, clause (b) of the said proviso imposes a fetter on a police officer directing him not to investigate a case where it appears to him that there is no sufficient ground in entering on an investigation. As clause (b) of the proviso permits the police officer to satisfy himself about the sufficiency of the ground even before entering on an investigation, it postulates that the police officer has to draw his satisfaction only on the materials which were placed before him at that stage, namely, the first information together with the documents, if any, enclosed. In other words, the police officer has to satisfy himself only on the allegations mentioned in the first information before he enters on an investigation as to whether those allegations do constitute a cognizable offence warranting an investigation.

52. From the above discussion, it is pellucid that the commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Code.

18. In the present case, the O/C Thoubal P.S., started investigation of the case by registering the said FIR No. 102(4) 2008 Thoubal P.S. u/s 121, 121A IPC and 17, 21 UA(P) A Act 2004 (sic) 1967 without any reason for suspecting the alleged fact that the petitioner-accused is a close friend of S/S Finance Secretary of the PLA. Shri Kh.Jadumani Singh and no reason or material or evidence that the present-accused had committed the offence punishable u/s 121 of the IPC. The FIR did not disclose any fact that that the petitioner-accused had committed the offence u/s 121 of the IPC, i.e. punishment for waging war or attempting to wage war or abetting wage of war against the Government of India.

As stated above, Sections 17 and 21 of the UA (P) A Act 1967 at the time of alleged occurrence i.e. 13.06.2003 are not the penal provisions for any offence.

19. The other grounds mentioned above, for convenience, are jointly taken up for decision.

The well defined democratic functions in the field of crime detection by the Police and its subsequent adjudication by the Court, is so well known. The functions of the judiciary and police are complimentary not overlapping. Combination of the individual liberty with due observance of law and order is to be obtained by leaving each to exercise its functions, always of course subject to right of court to intervene in appropriate case. The inherent power of the court can be

exercised (1) to give effect to an order under the Code; (2) to prevent the abuse of process of court and to otherwise secure ends of justice. The nature and purport of inherent jurisdiction of the High Court are that in exercising the jurisdiction u/s 482 or Section 561 A of the Criminal Code, 1898, the High Court can quash the proceedings, if there is no legal evidence or if there is any impediment to the institution or continuation of the proceedings.

20. The Apex Court in *Hazari Lal Gupta Vs. Rameshwar Prasad and Another, etc.*, held (SCC p.455, para 12) that "In exercising jurisdiction u/s 561 -A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is "reliable or not". Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with The provisions of the Criminal Procedure Code."

21. Hon"ble Mr.Justice Chandrachud, (Chief Justice, he then was) in *Madhu Limaye Vs. The State of Maharashtra*, stated that:

if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.

22. The Apex Court in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, held that:

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 established 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 utilized 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 proceedings even though it may be at a preliminary stage.

23. The Apex Court in *Bhanajlal's case (supra)* had prepared exhaustive list of myriad kind of cases wherein the inherent power u/s 482 of the Cr.PC should be exercised. Paras 102 and 103 of the SCC in *Bhajanlal's case (supra)* read as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court

in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

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

24. The Apex Court in Binay Kumar Singh and others Vs. State of Bihar, held that the O/C of a Police Station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence-Para 8 and 9 of the SCC in Binay Kumar Singh's case (supra) read as follows:

8. Learned counsel pointed out that neither the trial court nor the High Court has treated Ext. 14 (statement of PW 32 Sukhdev Bhagat) as forming the FIR in this case, instead the statement made by PW 36 Rabindra Bhagat which was marked as Ext 10/3 was treated as the FIR. True it is, that before the Sub-Inspector of Jehanabad Police Station (PW 42 Kalika Prasad) could record the statement of Sukhdev Bhagat (PW 32) some information had already reached the police station when Rabindra Bhagat (PW 36) went there by early morning. It has been marked as Ext 10/3. That information was entered in the station diary in the following words:

At this time Rabindra Bhagat, son of Soharai Bhagat, resident of Paras Bigha, P.S. Jehanabad came to police station accompanied by Bhangi Yadav, resident of Village Titai Bigha and gave the information that the sons (probably he meant sons and grandsons) of late Ram Niranjana Sharma had collected, with large number of persons in his village and they had set fire to the houses and piles of straw and also resorted to firing. He had fled away seeing the fire and he was not aware of the full facts as to what had happened."

9. But we do not find any error on the part of the police in not treating Ext 10/3 as the first information statement for the purpose of preparing the FIR in this case. It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. u/s 154 of the Code the information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First information report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer in charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto. (Tapinder Singh Vs. State of Punjab and Another, ; Soma Bhai Vs. State of Gujarat: (1975) 4 SCC 257, State of U.P. Vs. P.A. Madhu, .

25. The ratio laid down in Bhajanlal's case (supra) is also followed by the Apex Court in Reshma Bano Vs. State of Uttar Pradesh and Others, . Para 6 and 7 of the SCC in Reshma Bano's case (supra) read as follows:

6. The parameters where exercise of inherent power u/s 482 of the Code can be exercised either on proof of abuse of process of any court or otherwise to secure the ends of justice have been highlighted in several cases. In *State of Haryana v Bhajan Lal* : 1992 Supp(1) SCC 335, it was held that though it will not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised, certain illustrative cases were indicated. They are as follows: (SCC pp.378-79, para 102)

102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

7. A note of caution was indicated in the following words: (*State of Haryana and others Vs. Ch. Bhajan Lal and others*,)

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of

the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

26. The Apex Court in *Shakson Belthissor Vs. State of Kerala and Another*, held that the power to quash FIR/charge sheet u/s 482 Cr.P.C is exercised by the Court to prevent abuse of process of law and court but the power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the Police does not disclose any offence; or when the complaint is found to be frivolous, vexatious or oppressive. Para 14,15,16,18 and 25 of the SCC read as follows:

14. The scope and power of quashing a first information report and charge sheet u/s 482 CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

15. "5.....In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, . it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations (made) in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of the Magistrate for issuing process against the accused could be quashed under the following circumstances: (SCC p.741, para 5)

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

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

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."" As observed in *Alpic Finance Ltd. Vs. P. Sadasivan and Another*, .

16. In *Drugs Inspector, Palace Road, Bangalore Vs. Dr. B.K. Krishnaiah and Another*, it was held by this Court that :(SCC p.455, para 5)

5. In a quashing proceeding, the High Court has to see whether the allegations

made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence.

In the said decision this Court refused the prayer for quashing of the complaint on the ground that there were sufficient allegations in the complaint to make out a case that the accused persons were responsible for the management and conduct of the firm and, therefore, the extent of their liability could be and should be established during trial.

18. In MCD: (1983) I SC 1, this court observed as follows in para 8: (SCC p.5)

8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into a greater detail in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC p.741, para 5: SCC (Cri) pp.511-12]

"5.....Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

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

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

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or abuse of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

25. This Court has recently in R. Kalyani Vs. Janak C. Mehta and Others, , observed as follows: (SCC p.523, paras 15-16)

15. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in

their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is further well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

27. The Apex Court in *Ruchi Majoo Vs. Sanjeev Majoo*, reiterated that if allegations in the FIR do not reveal the alleged offence, it should be quashed. Para 78, 79, 80 and 81 of the SCC in *Ruchi Majoo's* case (supra) read as follows:

78. In this appeal the appellant has challenged the correctness of an order dated 22.9.2010 passed by the High Court of Delhi, quashing FIR No. 97 of 2009 registered against the respondent husband and three others in Police Station, Crime against Women Cell, Nanakpura, New Delhi, for offences punishable under Sections 498A, 406 read with Section 34 IPC.

79. The High Court has recapitulated the relevant facts and found that the appellant-complainant is a citizen of USA and has all along lived in USA with her son and husband, away from her in-laws. The High Court has, on the basis of the statement made by the appellant in the Californian court, further found that the alleged scene of occurrence was in USA and that her in-laws had no say in the matrimonial life of the couple.

80. The appellant had further stated that all her jewellery was lying in the couple's house in USA and no part of it was with her in-laws as was subsequently stated to be the position in the FIR lodged by the appellant. No locker number of the bank was disclosed in the FIR nor any date of the opening of the locker or the jewellery items lying in it. The particulars of the bank in which the alleged locker was taken by him were also not given in the FIR. The High Court further held that the appellant had not lodged any report although the appellant's parents-in-laws were alleged to have stated that the jewellery items were not commensurate with the status of their family as early as in the year

1996. The High Court in that view held that no offence under Sections 498A and 406 IPC, was made out against her in-laws on the basis of the allegations made by the appellant in the FIR.

81. Having heard the learned counsel for the parties we are of the opinion that in the light of the findings recorded by the High Court the correctness whereof were not disputed before us, the High Court was justified in quashing the FIR filed by the appellant. In fairness to the learned counsel, we must mention that although a feeble attempt was made during the course of hearing to assail the order passed by the High Court, that pursuit was soon given up by him. In that view of the matter we see no reason to interfere with the orders passed by the High Court in Crl.MC No. 3329 of 2009."

28. The Apex Court in Mohd. Shamim and Others Vs. Smt. Nahid Begum and Another, held that quashing of criminal proceedings is justified if further proceedings would be abuse of process of court. Para 15 of the SCC in Mohd Shamim & Ors's case (supra) read as follows:

15. This Court in Ruchi Agarwal Vs. Amit Kumar Agrawal and Others, in almost a similar situation has quashed a criminal proceeding against the husband, stating: (SCC 00.301-02, paras 8-9)

8.... Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

9. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue.

29. It will be worth to mention that after final hearing of this case and reserved for judgment, learned senior PP, submitted the records of the said FIR No. 102 (4) 2008 Thoubal P.S. u/s 121, 121-A IPC and 17, 21 UA(P) A Act, 2004. On perusal of the record, it appears that charge sheet has been prepared without any legally acceptable evidence or material for the offence u/s 121, 121A of IPC against the accused-petitioner. Keeping in view of the decisions of the Apex Court, discussed above, this court had carefully perused the FIR or information and annexures to the FIR and it is crystal clear that the said FIR is frivolous, vexatious and oppressive; it does not constitute the alleged offence or make out a case for the said offence against the petitioner-accused. The allegations made in the FIR are so absurd and inherently probable on the basis of which no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the petitioner-accused. The Court is constrained to observe that there is no material for the offence punishable u/s 121, 121A IPC against the petitioner-accused and also the investigating agency or/police officer or/prosecution had misunderstood the provisions of old Sections 17 and 21 of the

Unlawful Activities (Prevention) Act, 1967 i.e. before Unlawful Activities (Amendment) Ordinance, 2004 and Unlawful Activities (Prevention) Amendment Act, 2008 in the instant case, in which the alleged occurrence took place on 13.06.2003 and also misunderstood Article 20 of the Constitution of India.

For the foregoing discussions, the criminal case FIR No. 102 (4) 2008 Thoubal P.S. u/s 121, 121A IPC and 17, 21 UA (P) A Act, 2004 and the charge sheet prepared by the Police are hereby quashed. The cril revision petition is allowed.