Madhya Pradesh High Court
Manish Kumar Kartroliya vs The State Of Madhya Pradesh on 5 January, 2022
Author: Gurpal Singh Ahluwalia

1

THE HIGH COURT OF MADHYA PRADESH
MCRC-39483-2021
Manish Kumar Kartroliya Vs. State of MP and anr.

Gwalior, Dated : 05.01.2022

Shri Balwant Singh Kushwaha, Counsel for the applicant.

Shri C.P. Singh, Counsel for the State.

This application under Section 482 of CrPC has been filed for quahsment of FIR in Crime No.123/2018 registered at Police Station Lahar Distt. Bhind for offence under Sections 353, 332, 336, 147, 148, 149 of IPC as well as under Section 3 of Prevention of Damage to Public Property Act, 1984.

2. It is submitted by the counsel for the applicant that on 2nd of April, 2018, a procession was being taken by the members of reserved category against certain provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. When the procession reached near Lohiya Check Bazar, Lahar, 300 persons who were the members of the procession started trying to forcibly shutdown the market. The persons, who were the members of the procession, were insisting that in case, if the shops are not shutdown and shopkeeper do not support the call of Bharat Band, then they will be treated. However, those persons were informed that it is illegal to get the market closed, but they did not stop. Manish S/o Shivlal was also one of the members of the procession. Members of the procession were forcibly compelling the shopkeepers to shutdown

2

THE HIGH COURT OF MADHYA PRADESH
MCRC-39483-2021
Manish Kumar Kartroliya Vs. State of MP and anr.

their shops and when the police requested them not to act in such a manner and tried to restrain the members of the procession from closing down the market, then one person amongst the mob threw a stone on the complainant (SHO), which hit on right side of his back. When the police tried to disperse the mob, then the mob went to the police station and started pelting stones on the police station, as a result, not only, property of the police station was damaged, but constable Anil Tomar also suffered an injury below his eye. It is submitted by the counsel for the applicant that in fact, the applicant was not present at the time of procession/agitation and he had gone to Leh and Ladakh. It is further submitted that in case, if this Court is not inclined to quash the FIR qua the applicant, then he may be granted protection from his arrest. It is further submitted that there is nothing on record that Manish S/o Shivlal mentioned in the FIR is the applicant and not some other person.

3. Per contra, the application is vehemently opposed by the counsel for the State. It is submitted that so far as the question of plea of alibi is concerned, it is a defence, which is required to be proved by the applicant by leading cogent evidence. In the FIR, not only, name of the applicant is mentioned, but his father's name is also mentioned and it is not the case of the applicant that some other

Manish is there who is also the son of Shivlal.

4. When a specific question was put to the counsel for the applicant with regard to the scope of interference by this Court in

exercise of power under Section 482 of CrPC, then instead of citing any judgment, he submitted that this Court has un-limited powers and must exercise in order to protect the dignity of a person.

5. Heard the learned counsel for the parties.

6. So far as the applicant is concerned, he is specifically named in the FIR and his father's name has also been disclosed. Since the applicant is trying to dispute his identity, therefore, the burden is on him to establish that he was not involved in the offence.

7. So far as the question of alibi is concerned, it is well established principle of law that the burden heavily lies on a person who tries to take the benefit of plea of alibi. He has to prove the same by leading cogent evidence and not by preponderance of probabilities. The Supreme Court in the case of Vijay Pal v. State (Govt. of NCT of Delhi), reported in (2015) 4 SCC 749 has held as under :

> 25. At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the

prosecution. In this context, we may profitably reproduce a few paragraphs from Binay Kumar Singh v. State of Bihar: (SCC p. 293, paras 22-23)
"22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:
'(a) The question is whether A committed a crime at Calcutta on a certain day. The fact that, on that date, A was

at Lahore is relevant.'
23. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the

burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

(emphasis supplied)

The said principle has been reiterated in Gurpreet Singh v. State of Haryana, Sk. Sattar v. State of Maharashtra and Jitender Kumar v. State of Haryana.

The Supreme Court in the case of Sk. Sattar v. State of Maharashtra, reported in (2010) 8 SCC 430 has held as under :

35. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to

completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in Gurpreet Singh v. State of Haryana as follows: (SCC p. 27, para 20)

"20. ... This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact."

36. But it is also correct that, even though the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, the trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant.

The Supreme Court in the case of Binay Kumar Singh v. State of Bihar, reported in (1997) 1 SCC 283 has held as under:

22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the

> accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid

> down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Nath Pandey v. State of U.P.; State of Maharashtra v. Narsingrao Gangaram Pimple.

8. It is well established principle of law that this Court while exercising the powers under Section 482 of CrPC cannot conduct a detailed and roving enquiry into the correctness of the allegations. The Supreme Court in the case of Munshiram v. State of Rajasthan, reported in (2018) 5 SCC 678 has held as under :

> 10. Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the police. Further, it is no more res integra that Section 482 CrPC has to be utilised cautiously while quashing the FIR. This Court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. .....

The Supreme Court in the case of Teeja Devi v. State of Rajasthan reported in (2014) 15 SCC 221 has held as under :

5. It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

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

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

"65. ... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. ...

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

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

9

THE HIGH COURT OF MADHYA PRADESH
MCRC-39483-2021
Manish Kumar Kartroliya Vs. State of MP and anr.

(emphasis supplied)

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

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

The Supreme Court in the case of XYZ v. State of Gujarat reported in (2019) 10 SCC 337 has held as under :

14. Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the

appellant has blackmailed her or not, and further the 2nd THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.

(Underline supplied) The Supreme Court in the case of S. Martin (Supra) has held as under :

> 7. In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for.....
>
> The Supreme Court in the case of S. Khushboo v.

Kanniammal reported in (2010) 5 SCC 600 has held as under :

> 17. In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in State of Haryana v.

Bhajan Lal to take note of two such guidelines which are THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

relevant for the present case: (SCC pp. 378-79, para 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.

* * * (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."

18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "may examine the questions of fact" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In Shakson Belthissor v. State of Kerala this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25) "25. ... '16. ... 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 THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

untenable complaint.'*"

The Supreme Court in the case of Sangeeta Agrawal v.

State of U.P., reported in (2019) 2 SCC 336 has held as under :

> 8. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.
>
> The Supreme Court in the case of Amit Kapoor v.

Ramesh Chander reported in (2012) 9 SCC 460 has held as under :

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

> charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be: 27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. 27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. 27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender. 27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose. 27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence. 27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge. 27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist. [Ref. State of W.B. v. Swapan Kumar Guha Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre; Janata Dal v. H.S. Chowdhary; Rupan Deol Bajaj v. Kanwar Pal Singh Gill; G. Sagar Suri v. State of U.P.; Ajay Mitra v. State of M.P.; Pepsi Foods Ltd. v. Special Judicial Magistrate; State of U.P. v. O.P. Sharma; Ganesh Narayan Hegde v. S. Bangarappa; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.; Shakson Belthissor v. State of Kerala; V.V.S. Rama Sharma v. State of U.P.;

> THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.
>
> Chunduru Siva Ram Krishna v. Peddi Ravindra Babu; Sheonandan Paswan v. State of Bihar; State of Bihar v. P.P. Sharma; Lalmuni Devi v. State of Bihar; M.

Krishnan v. Vijay Singh; Savita v. State of Rajasthan and S.M. Datta v. State of Gujarat.] 27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in Madhavrao Jiwajirao Scindia was reconsidered and explained in two subsequent judgments of this Court in State of Bihar v. P.P. Sharma and M.N. Damani v. S.K. Sinha. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to

disputes involving cases of a predominantly civil nature with or without criminal intent.

The Supreme Court in the case of Ajay Kumar Das v.

State of Jharkhand, reported in (2011) 12 SCC 319 has held as under :

> 12. The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court i.e. State of Haryana v. Bhajan Lal. In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.
>
> hastened to add that as a note of caution it must be stated 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 for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

The Supreme Court in the case of Mohd. Akram Siddiqui v. State of Bihar reported in (2019) 13 SCC 350 has held as under :

> 5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.
>
> The Supreme Court in the case of State of A.P. v.

Gourishetty Mahesh reported in (2010) 11 SCC 226 has held as under :

> 18. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court

> should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.
>
> issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short- circuit a prosecution and brings about its closure without full-fledged enquiry.
>
> 19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.
>
> 20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

The Supreme Court in the case of Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy reported in (2012) 12 SCC 437 has held as under :

> 11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is

discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

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

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

14. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide Dhanalakshmi v. R. Prasanna Kumar; Ganesh Narayan Hegde v. S. Bangarappa and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.)

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

16. In the landmark case of State of Haryana v. Bhajan Lal this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint: (SCC pp. 378-79, para 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 under Section 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 THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

police officer without an order of a Magistrate as contemplated under Section 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."

17. In Indian Oil Corpn. v. NEPC India Ltd. a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles: (SCC p. 748, para 12)

1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out:

(a) purely a civil wrong; or (b) purely a criminal THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In State of Orissa v. Saroj Kumar Sahoo it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11) "11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre this Court held as under: (SCC p. 695, para 7) "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in Madhavrao Jiwajirao Scindia, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in Madhavrao case was reconsidered and explained by this Court in State of Bihar v. P.P. Sharma which reads as under: (SCC p. 271, para 70) "70. Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. ... Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power

under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

22. Thus, the judgment in Madhavrao Jiwajirao Scindia does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of Madhavrao Jiwajirao Scindia is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal.

The Supreme Court in the case of M. Srikanth v. State of Telangana, reported in (2019) 10 SCC 373 has held as under :

> 17. It could thus be seen, that this Court has held, that where 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 prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

The Supreme Court in the case of M.N. Ojha v. Alok Kumar Srivastav reported in (2009) 9 SCC 682 has held as under :

> 30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP

and anr.

criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

31. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. [If such power is not conceded, it may even lead to injustice.]"

(See State of Karnataka v. L. Muniswamy, SCC p. 703, para 7.)

32. We are conscious that "inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases".

(See Kurukshetra University v. State of Haryana, SCC p.

451, para 2.) The Supreme Court in the case of CBI v. Arvind Khanna reported in (2019) 10 SCC 686 has held as under :

17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

9. Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the un-controverted allegations do not make out any offence, only then this Court can quash the F.I.R.

10. Further, the Supreme Court in the case of State of MP Vs. Kunwar Singh by order dated 30.06.2021 passed in Cr.A.

No.709/2021 has held that a detailed and meticulous appreciation of evidence at the stage of 482 of CrPC is not permissible and should not be done. In the case of Kunwar Singh (supra), the Supreme Court held as under:-

> "8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia....."

11. So far as the contention of the counsel for the applicant that in case, if this Court is not inclined to quash the FIR, then it should grant a protection to the applicant from his arrest is concerned, it is well established principle of law that if this Court declines to interfere in exercise of power under Section 482 of CrPC, then no interim order in favour of the applicant can be issued. The Supreme Court in the case of M/s Neeharika Infrastructure Pvt. Ltd. Vs. THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

State of Maharashtra and others by order dated 13.04.2021 passed in Cr.A. No.330/2021 has held as under:-

> "14. A similar view has been expressed by this Court again in the case of Asian Resurfacing of Road Agency Private Limited (supra). By deprecating the interlocutory orders/stay of criminal proceedings by the High Courts, it is observed by this Court that the stay should not be considered as an incentive to cause delay in the proceedings. It is further observed that order granting stay or extending it must be a speaking order and stay not to operate long. It is further observed in the said decision that delay in a criminal trial has deleterious effect on the administration of justice in which the society has a vital interest; delay in trials affects the faith in Rule of Law and efficacy of the legal system; it affects social welfare and development; mere prima facie case is not enough; party seeking stay must be put to terms and stay should not be incentive to delay; the order granting stay must show application of mind; the power to grant stay is coupled with accountability. It is further observed that wherever stay is granted, a speaking order must be passed showing that the case was of an exceptional nature.

15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory

right/duty of the police under the provisions THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.

16. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or "no coercive steps to be taken against the accused" in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India with assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As observed hereinabove, it is the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of blanket interim orders without assigning reasons, of not to arrest and/or "no coercive steps" would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.

The aforesaid is required to be considered from THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

another angle also. Granting of such blanket order would not only adversely affect the investigation but would have far reaching implications for maintaining the Rule of Law. Where the investigation is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation may not be very fruitful for the simple reason that the evidence may no longer be available. Therefore, in case, the accused named in the FIR/complaint apprehends his arrest, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. and on the conditions of grant of anticipatory bail under Section 438 Cr.P.C being satisfied, he may be released on anticipatory bail by the competent court. Therefore, it cannot be said that the accused is remediless. It cannot be disputed that the anticipatory bail under Section 438 Cr.P.C. can be granted on the conditions prescribed under Section 438 Cr.P.C. are satisfied. At the same time, it is to be noted that arrest is not a must whenever an FIR of a cognizable offence is lodged. Still in case a person is apprehending his arrest in connection with an FIR disclosing cognizable offence, as observed hereinabove, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. As observed by this Court in the case of Hema Mishra v. State of Uttar Pradesh, (2014) 4 SCC 453, though the High Courts have very wide

powers under Article 226, the powers under Article 226 of the Constitution of India are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. It is further observed that in entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 Cr.P.C. proceedings. It is further observed that on the other hand whenever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of THE HIGH COURT OF MADHYA PRADESH MCRC-39483-2021 Manish Kumar Kartroliya Vs. State of MP and anr.

anticipatory bail in exercise of its powers under Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified. However, such a blanket interim order of not to arrest or "no coercive steps" cannot be passed mechanically and in a routine manner."

12. In the present case, uncontroverted allegations prima facie make out an offence because not only, an attempt was made to forcibly close the market, but when the police tried to persuade the members of the mob not to behave in such a manner, then they did not listen to them. When the police party tried to disperse them, then not only, they attacked the public property of the police station, but also caused injury to the police personnel.

13. Considering the totality of the facts and circumstances of the case, no case is made out warranting interference.

14. Accordingly, the application fails and is hereby dismissed.

(G.S. Ahluwalia) Judge Abhi ABHISHEK CHATURVEDI 2022.01.06 18:54:54 +05'30'