

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Order: 18th April, 2022**

+ W.P.(CRL) 99/2022 & CRL.M.A. 1092/2022

SH. K. UDAYANANDA REDDY & ANR. ... Petitioners

Through: Mr. Tarun Chandiok, Advocate

versus

STATE & ORS. ... Respondents

Through: Ms. Nandita Rao, ASC for State
With Mr. Amit Peshwani
Advocate with SI Suresh
Kumar, P. S. EOW
Mr. Rohit Choudhary,
Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition has been preferred under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, referred to as the "Code") praying for quashing the case FIR No. 93/2021 registered at PS – EOW, Tilak Marg against the Petitioner under Sections 406/420/120B of the Indian Penal Code, 1860.

2. The brief facts of the case, as per the prosecution, are that the present FIR was lodged on 3rd July 2021, under the provisions as

mentioned above, on the complaint of Sh. Atul Kant Chaturvedi s/o Sh. P.N. Chaturvedi, Authorised Representative of M/s Perfect Synergy Advisory Pvt, having its registered office at 1501, Chiranjiv Tower, 43, Nehru Place, New Delhi.

3. The Complainant alleged that accused persons approached and represented to him that their company M/s Sagar Infra Rail International Limited is involved in Lucrative Railway Projects for Indian Railway having govt. clients and international projects in Dubai etc. They further conveyed to him that they were getting Rs. 100 Crores from their clients within 6 to 9 months for their work done on the projects. Under inducement by the accused persons on 19th May 2011, an amount of Rs. 3.50 Cr. was given to the accused to be repaid within 6 months and a "Short Term Loan Agreement" dated 19th May 2011 was accordingly executed.

4. It is alleged that during execution of the Short Term Loan Agreement, the accused persons handed over title deeds of their five properties, one being in Delhi and others in Hyderabad. Accused persons failed to repay the amount as per their promise and agreement. When the complainant followed up with the accused persons for repayment of money, the accused persons surreptitiously sought the original title deeds of the property situated at Plot no. B-1 8/2-B, area measuring 350sq. yards, Shyam Vihar, Phase II, Najafgarh, Delhi for selling the same for the purpose of repayment to the complainant. The accused persons issued two cheques to the complainant, relying on the cheques given by them, the complainant handed over the original title

deeds of the Property at Najafgarh, Delhi to the accused persons. However, no payment was made by the alleged accused persons and the cheques issued by them were dishonoured for want of the account having "insufficient funds/Exceeds arrangements". The complainant has alleged that the accused is showing his intention to cheat right from the beginning.

5. Learned Counsel for the Petitioners submitted that the petitioners are innocent and have been falsely implicated in the instant case. The foul play in the registration of the impugned FIR is evident from the fact that it has been registered after a delay of almost a decade, and the apparent motivation of the Respondent No.2 behind registration of FIR is the frustration of civil recovery proceedings already underway since the initiation of insolvency proceedings, against the Respondent No.3 vide order dated 8th August 2019 passed by the National Company Law Tribunal, Hyderabad Bench, under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in the case of '*State Bank of India v. M/s. Sagar Infra Rail International Limited*'. It is contended that the vicarious liability of the Respondent No.3 company has been sought to be fastened upon the Petitioners without naming it as the principal accused in the impugned FIR.

6. The impugned FIR is bad in law, while the Respondent No.2 has sought to fasten a vicarious criminal liability upon Petitioners for the acts and transactions entered by them as Directors of the Respondent

No.3 company, however, he perversely preferred not to pursue its remedies against the latter company owing to the apparent fact that it has gone into liquidation. The impugned FIR is therefore liable to be quashed on this count alone. It is submitted that the petitioners have joined the investigation via online mode and are fully cooperating with the same.

7. It is submitted that the impugned FIR is a circuitous attempt to implicate the Petitioners in an egregiously false, concocted, and motivated case. The impugned FIR is nothing but a blatant abuse of process of law and is liable to be quashed to prevent miscarriage of justice and harassment to the otherwise despondent Petitioners against whom insolvency proceedings have already commenced and moratorium is in operation. Therefore, it is humbly prayed that the instant FIR and all consequential proceedings emanating therefrom be quashed.

8. *Per Contra*, Ms. Nandita Rao, learned ASC for State vehemently opposed the instant petition and submitted that after enquiry of the case made by the complainant, the present case was registered, and investigation was taken up. In the investigation, the complainant was examined and documents in support of the claim was obtained. Records of the ROC, Banks have been obtained and scrutinized. Bank transactions support the complainant's version regarding disbursement of loan amount. Despite several notices being issued upon the petitioners, they failed to join the investigation. After being granted anticipatory bail, both the accused joined the

investigation online. After examination of both the petitioners and perusal of documents provided by them, it was learnt that the property no. 3-18/ 23 situated in Najafgarh was sold to Mr. Raj Kumar in 2012.

9. In the investigation, it was revealed that alleged company M/s Sagar Infra Rail International Limited is under liquidation. Sh. K. Sri Vamsi has been appointed as liquidator for M/s Sagar Infra Rail International Limited. It is submitted that the petitioners were managing director and director in the company, and they stood as guarantors of the loan. They pledged the property as security and later, transferred the said property to another party. This case involves cheating of a huge amount of Rs. 3.50 Crores. The entire conspiracy needs to be unearthed and the petitioners are not cooperating with the investigation. There is no case made out for quashing the FIR. Therefore, it is submitted that the instant petition is nothing but abuse of process and hence, be dismissed as being devoid of merit.

10. Heard learned counsels for the parties and perused the record.

11. The petitioners have *inter alia* invoked the power of the Court under Section 482 of the Cr.P.C., therefore, it is appropriate to refer to the said provision and the extent of powers that are exercisable under the same vis-à-vis quashing. The provision reads as under:

“482. Saving of inherent powers of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this

Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

12. It is well established principle of law that the High Court has inherent power to act *ex debito justitiae* - to do real and substantial justice for the administration of which alone it exists or to prevent the abuse of process of the Court.

13. The bare language of the provision unambiguously states that the inherent powers of the High Court are meant to be exercised:

- (i) to give effect to any order under the Code; or
- (ii) to prevent abuse of the process of any Court; or
- (iii) to secure the ends of justice.

14. The principle embodied in this Section is based upon the maxim: *Quando lex aliquid alicui concedit, concedere videtur id quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavoidable. The Section does not confer any new power, rather it only declares that the High Court possesses inherent powers for the purposes specified in the Section. The use of extraordinary power is however required to be reserved only for extraordinary cases, where the judicial discretion and indulgence is warranted as per the facts of the case.

15. The aforementioned provision has been referred to, analysed and interpreted in a catena of judgments of the Hon'ble Supreme Court, few of which are referred to in the following paragraphs.

16. A seven-Judge Bench in the case of ***P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578*** laid down the principles for exercise of the power under Section 482 Cr.P.C. in a case where the Court was convinced that such exercise was necessary in order to prevent abuse of the process of any Court or to secure the ends of justice. The Hon'ble Supreme Court observed:

*“21. ... In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in ***A.R. Antulay*** case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.”*

17. In the case of *Kaptan Singh v. State of U.P.*, (2021) 9 SCC 35, the Hon'ble Supreme Court has held that:

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

18. In *Jitul Jentilal Kotecha v. State of Gujarat and Others*, 2021 SCC OnLine SC 1045, the Hon'ble Supreme Court has recently held that:

“27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in Jugesh Sehgal v. Shamsheer Singh Gogi, this Court has held that, “[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.” In Simrikhia v. Dolley Mukherjee, this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:

“5. ... Section 482 enables the High Court to make such order as may be necessary to give effect to any

order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.”

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31. Recently, in ***Mahendra KC v. State of Karnataka***, this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:

“16... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial.”

19. The Hon’ble Supreme Court while deciding the case of ***State of Orissa v. Pratima Mohanty, 2021 SCC OnLine SC 1222*** on 11th December 2021, has comprehensively dealt with the powers exercisable and extent of the jurisdiction of the High Court while deciding a petition under Section 482 of the Cr.P.C. The Hon’ble Supreme Court has held as under:

*“6. As held by this Court in the case of ***State of Haryana and Ors. vs Ch. Bhajan Lal and Ors. AIR 1992 SC 604***, the powers under Section 482 Cr.P.C. could be exercised either*

*to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482 Cr.P.C. the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 in **Bhajan Lal (supra)** which reads as under:*

“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 under Section 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 channelized 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 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 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 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.”

6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per

settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the chargesheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

20. In ***Jaswant Singh v. State of Punjab and Another***, 2021 SCC OnLine SC 1007, the Hon’ble Supreme Court has held as under:

“15. The power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of any Court and also to secure the ends of justice. This Court, time and again, has laid emphasis that inherent powers should be exercised in a given and deserving case where the Court is satisfied that exercise of such power would either prevent abuse of such power or such exercise would result in securing the ends of justice...”

21. The position of law that is crystallised, in light of the aforementioned judgments, is that quashing should be an exception and the Section 482 jurisdiction for the same should be exercised sparingly, with circumspection and in rarest of the rare cases.

22. Hence, what is only required to be seen is whether there has been an abuse of process or that the interest of justice requires the proceedings to be quashed.

23. Having delineated the scope of the powers of the Court in exercise of its jurisdiction under Section 482, it is pertinent to analyse the test that is required to be applied by this Court while considering a petition for quashing of FIR.

24. The Hon'ble Apex Court has given its finding on a *prima facie* satisfaction while deciding a quashing Petition on merit. In the matter of *Satvinder Kaur v. State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728, the Hon'ble Supreme Court observed as under: -

“14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561: 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. [Pratibha Rani v.

Suraj Kumar, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]”

25. The Hon’ble Supreme Court in the matter of ***Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104***, noted as under: -

“31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate probe to unearth the crime in accordance with the procedure prescribed in the Code.

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34. On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and the FIR do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons, and therefore, the High Court instead of dismissing the application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.”

26. In ***M/s Neeharika Infrastructure Private Limited v. State of Maharashtra, 2021 SCC OnLine SC 315***, Hon’ble Supreme Court has held that the High Courts while considering quashing of FIR need not go into the cognizance of the offence and appreciation of evidence. The Hon’ble Supreme Court prescribed as under: -

“i. Police has the statutory right and duty under the relevant provisions of the Code of Criminal

Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii. Courts would not thwart any investigation into cognizable offences;

vii. Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

xii. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;”

27. Further, while examining an FIR for quashing under Section 482, the Court:

- (a) cannot enter into the merits of the case, or
- (b) cannot embark upon a roving enquiry, or
- (c) cannot conduct a trial as to the reliability or genuineness of allegations made in the FIR, or
- (d) cannot see the probability of conviction on the basis of evidence on record.

28. In the instant case, upon a perusal of the FIR, a prima facie case is made out against the petitioners herein and therefore, there is no

reason warranting the indulgence of this Court to interfere with the investigation at this stage.

29. There is also nothing on record to give even an iota of hint that continuing the investigation/proceedings in the instant case would be an abuse of process or that the case is required to be quashed to secure the ends of justice. A bare perusal of the FIR discloses a prima facie serious offence against the petitioners. The petitioners have further been alleged of misusing the liberty granted by the Court as Anticipatory Bail and thereafter not cooperating with the investigation. Therefore, there is no cogent reason warranting the exercise of the extraordinary writ jurisdiction of this Court. Accordingly, the instant petition is dismissed being devoid of merits.

30. It is made clear that observations made herein shall have no bearing whatsoever on the merits of the case at any stage during the trial or any other proceedings before any other Court.

31. Pending applications, if any, also stand disposed of.

CHANDRA DHARI SINGH, J

APRIL 18, 2022
gs/ak