SUPREME COURT OF INDIA

Central Bureau of Investigation

Vs.

K.M. Sharan

Crl.No.351 of 2008

(Ashok Bhan and Dalveer Bhandar JJ.)

21.02.2008

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. The Central Bureau of Investigation (for short `CBI) has questioned the legality and propriety of the judgment and order dated 17.11.2006 in Crl. MP No.1802/2006 delivered by the High Court of Delhi by which it quashed the FIR and the charge-sheet against the accused-respondent under sections 120B and 193 of the Indian Penal Code.

3. Brief facts which are necessary to dispose of this appeal are recapitulated as under:- A case (FIR RC No.AC3/2003, 0002) was registered against the then Vice- Chairman of the Delhi Development Authority and other senior officials of the DDA for entering into conspiracy with Dharmbir Khattar, Ajay Khanna, Ravinder Taneja, G.R. Gogia and Mukesh Saini to give undue favor to M/s DLF Universal Limited, New Delhi in the matter of allowing 300 Floor Area Ratio (FRA) in respect of one of the projects of DLF Universal by charging rates much below the prevailing market rates and obtained or agreed to obtain illegal gratification from M/s DLF as quid pro quo. The total bribe amount was 1.10 crores. During the course of investigation and subsequent search conducted at the residence of the respondent's son A.M. Sharan who was at that time Commissioner (Land Disposal, DDA), certain papers/documents relating to assets acquired/expenses incurred by him and his family members besides the cash amount of Rs.36 lacs were recovered and seized by the Central Bureau of Investigation. Consequently, a fresh FIR No.RC.AC.3/2003 A0003 was registered against A.M. Sharan, the son of the respondent.

4. During the investigation of the subsequent case emanating from FIR No. RC.AC.3/2003 A0003, A.M. Sharan claimed that the cash of about Rs.36 lacs recovered from his residence belonged to his father, the respondent herein. On enquiry from the father, the respondent K.M. Sharan took the plea in writing that the amount recovered from the residence of his son

belonged to him whom he had received as sale proceeds of two properties, i.e., Plot No. 908 and House No. C- 2/388, Janak Puri, New Delhi. The respondent submitted that the cash of Rs.4 lacs and 10 lacs received by him on 04.02.2003 and 06.03.2003 respectively from Vijay Gulati for the sale proceeds of Bahadurgarh plot and the cash amount of Rs.22 lacs was received on 20.03.2003 as an advance from Harmanjeet Singh and Anoop Singh for sale of Janak Puri house in total consideration of Rs.50 lacs.

5. The CBI found that there were several inconsistencies and irregularities in the stand taken by the respondent (written plea) and the stand taken by his son, A.M. Sharan with regard to recovery of Rs.36 lacs from the residence of A.M. Sharan. The CBI conducted investigation and after its completion, charge-sheet was filed on 06.09.2005 in the Court of Special Judge, Patiala House Courts, New Delhi for offences under sections 13(2) read with 13(1) of the Prevention of Corruption Act, 1988 against A.M. Sharan and also under section 120B read with section 193 IPC against A.M. Sharan and the respondent. The respondent filed Criminal Miscellaneous Petition No.1802 of 2006 under section 482 of the Code of Criminal Procedure for quashing of the FIR/charge-sheet under section 120B read with 193 IPC. The High Court by the impugned judgment quashed FIR No. RC AC3/2003. According to the CBI, the FIR/charge-sheet was erroneously quashed by the High Court.

6. According to the appellant CBI, the High Court did not consider the material collected during investigation which according to the appellant was sufficient to prove the charges. According to the CBI, the High Court did not properly consider the entire material in proper perspective. According to the CBI, the allegations leveled against the respondent were fully supported by documents and also sufficient to prove the case during the trial. According to the CBI, the High Court has seriously erred in quashing the FIR/charge-sheet at the very threshold without even giving an opportunity to the CBI to lead evidence in the case. According to the appellant CBI, during investigation it was revealed that the stand taken by the respondent with regard to the recovery of Rs.36 lacs is totally false and untenable. The documents which were supplied to the appellant CBI in support of the stand taken by the respondent were also found to be false.

7. Mr. Gopal Subramanium, the learned Additional Solicitor General, appearing for the appellant, in order to demonstrate that in this case the ingredients of section 120B read with section 193 IPC are fully made out, has drawn our attention to the charge-sheet in extensor. We deem it appropriate to reproduce certain portions of the charge-sheet to evaluate whether the ingredients of offence under section 120B read with section 193 IPC are made out or not. It would not be appropriate to comment on the material collected by the CBI because the evidence has yet not been adduced, but from the prime facie material on record, we would try to adjudge and evaluate whether the High Court was justified in quashing the FIR and the charge-sheet in this case. The relevant para nos. 3, 8 and 17 to 21 of the charge-sheet read as under:

> "3. It was alleged in the FIR that accused Anand Mohan Sharan, while working in different capacities in Govt. of Haryana and as Commissioner (Land Disposal), Delhi

Development Authority, New Delhi (while on deputation to Govt. of India from 17.7.2001 to 28.3.2003) between the period from 1990 to 27.3.2003 by corrupt or illegal means or by abusing his official position as public servant acquired assets in his own name or in the name of his family members which are substantially disproportionate to his known sources of income. It is also alleged that during the period from 31.8.1990 to 27.3.2003, Shri Anand Mohan Sharan had a total income of around Rs.28.06 lacs from all sources and his total expenditure during the said period was around Rs.12.68 lacs. It was further alleged that as against the likely savings of Rs.15.38 lacs approximately, he has been found in possession of assets totaling Rs.59.89 lacs approx. which are disproportionate to his known sources of income to the extent of Rs.44.51 lacs, which he could not satisfactorily account for."

8. Investigation has further disclosed that till 22.8.1991 Shri Anand Mohan Sharan did not have any significant/noticeable assets. It is also disclosed that Shri Anand Mohan Sharan acquired a residential flat at HOPE Apartments, Gurgaon and the payments for the same were made during the period from 22.8.1991 to 14.12.1995. It has also been disclosed that the said flat was allotted to accuse Anand Mohan Sharan on 9.10.1995 and it is still in his possession. It is further disclosed that in a short spell of time accused Anand Mohan Sharan accumulated substantial movable assets including Bank balances and other investments.

9. Investigation has further disclosed that during search conducted in RC.AC.3/2003 A002 at the residence of Shri Anand Mohan Sharan, cash of Rs.36,14,970/- was recovered from two different places in the house, out of which Rs.33 lacs in the form of 1000 currency notes of Rs.1000/- each, 4600 currency notes of Rs.500/- each and balance 600 currency notes of Rs.100/- each were found inside a VIP sky bag, kept inside box type double bed of master bedroom at 1st floor. The remaining cash aggregating to Rs.3,14,970/- was found/recovered from different steel almirahs, in the said house.

10. During investigation Shri Anand Mohan Sharan claimed that the amount of Rs.36 lakhs recovered from his residence belonged to his father. On his part, Shri K.M. Sharan, father of accused took the plea that the amount recovered from the residence of his son was received as sale proceeds of two properties - (a) Plot No. 908, MIE, Bahadurgarh and (b) House No. C-2/388, Janak Puri, New Delhi. He contended that cash of Rs.4 lakhs and Rs.10 lakhs respectively were received by him on 4.2.2003 and 6.3.2003 from Shri Vijay Gulati at Bahadurgarh Plot and an amount of Rs.22 lakhs was received on 20.3.2003 from Shri Harmanjeet Singh and Shri Anoop Singh as advance for sale of Janakpuri House against a total consideration of Rs.50 lakhs. He has also claimed that since he had to proceed to Jaisalmer on 8.3.2003, he kept the amount of Rs.14 lakhs received for Bahadurgarh plot with his son Shri Anand Mohan Sharan. Further, he also contended that he had fractured his leg at Jaisalmer and had returned to Delhi on 12.3.2003. Under these circumstances he had to stay at his son's house for a couple of days and on 20.3.2003, the deal for sale of Janakpuri house also materialized and consequent thereto, he claimed to have kept the said amount of Rs.22 lakhs also at his son's residence. He further claimed that it was in view of his medical

condition that he considered it prudent to keep cash received towards the above mentioned sale transactions at his son's house.

11. During the investigation, the plea taken by Shri K.M. Sharan was found to be dubious and incorrect, as a number of inconsistencies were found in the explanation which rebut the explanation of Shri K. M. Sharan and accused Shri Anand Mohan Sharan in tandem, regarding recovery of Rs.36 lakhs. Such inconsistencies are listed as under:-

> "(i) That the search was conducted in RC.AC.3/2003 A002 at the residence of Shri Anand Mohan Sharan on 27.03.2003. It is pertinent to mention that Shri K. M. Sharan, father of Shri Anand Mohan Sharan, was not present at the house of Shri Anand Mohan Sharan at the time of the search when Rs.36 lacs were recovered from him. Further, house search at C-2/388, Janakpuri, New Delhi of Shri K. M. Sharan was also conducted on 28.3.2003, i.e. one day after the search at the house of Shri Anand Mohan Sharan. During the search, cash of Rs.75,000/- was also seized from Shri K.M. Sharan's house. The plea of Shri K. M. Sharan that Rs.36 lacs was kept by him at his son's house for safe keeping becomes untenable due to recovery of substantial amount of cash from his own house too, subsequently.
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> (ii) That Shri Krishan Mohan Sharan was required to give his consent for lie detector test in the context of his claim regarding Rs.36 lakhs seized from the residence of Shri Anand Mohan Sharan. However, Shri Krishan Mohan Sharan expressed his unwillingness in writing citing medical reasons. On the basis of Medical advice of Dr. S.S. Bansal, Director, Metro Heart Institute, Faridabad in whose hospital he was earlier admitted after the arrest of Shri Anand Mohan Sharan in RC AC3/2003 A002. Incidently, Shri K. M. Sharan was treated by Dr. S.S. Bansal as a `complimentary' patient during that time and no payment was charged.
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> (iii) That the property no. C-2/388, Janakpuri, New Delhi for the sale of which an amount of Rs.22 lacs was claimed to have been received, was mortgaged to Bank of Baroda, Navada Branch, New Delhi, in lieu of Bank guarantee for Rs.1 crore issued by the Bank on behalf of M/s Sharan Distributors. The said Bank guarantee was issued on 27.8.2002 in lieu of a security deposit of Rs.1 crore on behalf of M/s. Sharan Distributors against equitable mortgage of property situated at C-2/388, Janakpuri, New Delhi. It is also disclosed that the borrower is morally under obligation not to deal with the property in any manner, whatsoever, without the written consent/approval of the Bank. In view of this, Shri Krishan Mohan Sharan could not have entered into an agreement to sell with Shri Harmanjeet Singh and Shri Anoop Singh, without the consent of the Bank. Investigation has also disclosed that Shri Ved Prakash Aneja, Chartered Engineer, C-2/19, Janakpuri who was deputed by the Bank to conduct Valuation of the said property, C-2/388, Janakpuri, New Delhi at the time of issuing Bank guarantee, had valued the same at Rs.1 crore 29 lakhs as per valuation report dated 21.7.2001. It completely defies logic and commonsense that

this property valued at Rs.1 crore 29 lacs was being sold for a total consideration of Rs.50 lacs to Shri Harmanjeet Singh and Shri Anoop Singh.

(iv) That, Shri Anoop Singh who purportedly financed Rs.12 lakhs out of Rs.22 lakhs for purchase of Janakpuri property, while disclosing the source of this amount he claimed that he and his family members received money amounting to Rs.10,60,000/- in 28 separate installments from August 2002 to March 2003 from his relatives settled in USA through Western Union Money Transfer. It defies commonsense and reasonable prudence that this money never entered banking channels from August 2002 to March 2003 and was kept in the house by Shri Anoop Singh, and was finally allegedly paid in cash to Shri K.M. Sharan.

(v) That, the stamp paper purchased for the purported sale/purchase of House No.C-2/388, Janakpuri, New Delhi is shown to have been purchased on 20.03.2003 in the record of Shri Devender Kumar, Stamp Vendor and entry to this effect has been made in the last line of the page at Sl. No. 94304, which is in handwriting different from the preceding and succeeding entries. Moreover, entry at Sl. Nos. 94084, 94147, 94484, 94592, 94593, 94775, 94812, 94924, 94925, 94999, 95186, 95698, 95881, 97547, 97913, 98095, 99427 and 98503 are deliberately left blank being the last serial No. of the relevant pages. Further Sl. Nos. 71, 121, 122, 124 to 127, 130, 131, 142, 143, 145 to 147, 153, 154, 162, 163, 174 to 180, 188, 189, 193, 194, 197, 199, 200, 201, 203 to 207, 221, 222, 225 to 229, 233, 239, 245 to 249 have been left blank to facilitate such false entries, as done in the instant case. Moreover, as per practice, Stamp Papers are purchased by the party who is purchasing any property whereas the relevant stamp papers have been shown purchased in the name of Shri K.M. Sharan. Thus the credibility of the agreement to sell is doubtful. During investigation, Shri Devender Kumar, Stamp Vendor who sold Stamp Papers for property no. C-2/388, Janakpuri, New Delhi on 20.3.2003, stated that some employee of an advocate had come to him and requested for back dated stamp paper in the name of Shri K.M. Sharan, as the stamp paper purchased earlier was purportedly lost. Accordingly, he saw his register and found that entry at Sl. No. 94304 was lying blank. So he made an entry regarding sale of stamp paper to Shri K.M. Sharan in that blank space available in the date 20.3.2003 in his register, whereas it was sold much later.

(vi) That, Shri Krishan Mohan Sharan has taken a plea that amount of Rs.36 lakhs received by him for sale of two properties could not be deposited in the Bank as he was searching for a property for his daughter and later on he fractured his leg, due to which he could not visit the Bank. But during investigation many Bank accounts of Shri K. M. Sharan and his company were scrutinized, which show that during the relevant period, there were many debits as well as credit entries made in those accounts and that he had operated his Bank accounts through his employees.

(vii) That, Shri K.M. Sharan claimed that he had kept Rs.4 lakhs in his house which was received by him on 4.2.2003 towards advance for sale of plot at Bahadurgarh till

8.3.2003 instead of depositing the same at Bank of Baroda located near his house, where he had an account. He has claimed that this amount was kept at Anand Mohan Sharan's residence on 8.3.2003 i.e. more than one month later. He also claimed that part payment of Rs.10,00,000/- received on 6.3.2003 in the same deal was also kept by him at Anand Mohan Sharan's residence on 8.3.2003 instead of depositing the same in the aforesaid Bank located near his house. These claims of Shri K. M. Sharan are devoid of any logic, and defy normal human prudence/practice.

(viii) That, during investigation, Shri Vijay Gulati and Shri Ajay Gulati who allegedly purchased the Bahadurgarh plot have stated before independent witnesses, that the currency notes of Rs.14 lacs paid by them to Shri K.M. Sharan for the deal of Bahadurgarh plot were in the denomination of Rs.100 and Rs.50/-. However, in the currency notes of 36 lacs, which was seized from the residence of Shri Anand Mohan Sharan, as aforementioned, the currency notes found in the denomination of Rs.100/- add up to only Rs.60,000/-. It is also disclosed that there are no currency notes in the denominations of Rs.50/- as rest of currency notes are in the denominations of Rs.1000/- and Rs.500/-.

(ix) That Shri Vijay Gulati of M/s. Sunrex Fabrics made false and manipulated entries in the books of accounts of M/s. Gulati & Co. and in the Account Book of M/s. Sunrex and Co. to show availability of Rs.14 lakhs in cash purportedly paid to Shri K. M. Sharan. These manipulated entries according to Shri Vijay Gulati were made at the behest of Shri K. M. Sharan after the aforementioned recovery of Rs.36 lacs, to legitimate existence of Rs.14 lacs. In order to show receipt/generation of Rs.14 lakhs in Account Books of M/s. Gulati and Co., Shri Vijay Gulati had also prepared false cash memos showing receipt/generation of sales worth Rs.14 lacs by M/s. Gulati & Co. and thereafter, the amount was shown transferred to the account of M/s Sunrex & Co. However, the Ledger Book of M/s Sunrex & Co., which indicates total transaction of the company does not show receipts/generation of sales worth Rs.14 lacs during the period 18.1.2003 to 3.3.2003. Further whereas the sale proceeds of M/s Gulati & Co. between August 2000 to January, 2003 (29 months) were worth Rs.1,52,534/- purchased sales shown to have been made between 18th January, 2003 and 3rd March, 2003 (44 days) were for Rs.13,83,106/-. This clearly indicates an inconsistent pattern of purported business/sales of M/s. Gulati & Co. through false cash memos, which were prepared to show false sales."

12. Thus, the investigation has disclosed that Shri K. M. Sharan, in order to save his son actively connived with him to fabricate false evidence to legitimize the ill-gotten amount of Rs.36 lakhs recovered as aforementioned from Shri Anand Mohan Sharan's residence. Shri Anand Mohan Sharan failed to satisfactorily account for the source of acquisition of his numerous assets. During the course of investigation, he has, in connivance with his father come up with certain dubious explanations and in support thereof created certain fraudulently prepared documents showing cash of Rs.36 lacs recovered from him as belonged to Shri K. M. Sharan. Investigation by CBI into this aspect has proved the aforementioned

claims/explanations to be false. It is also disclosed that Shri Anand Mohan Sharan had entered into a criminal conspiracy with his father Shri K.M. Sharan, in furtherance to which false evidence was created and submitted during the course of investigation in the instant case.

13. The investigation has therefore established that the said Shri Anand Mohan Sharan during the period 22.08.1991 to 27.03.2003 was in possession of assets which are disproportionate to his known sources of income by Rs.45,70,560.38 (Rupees Forth five lacs, seventy thousand, five hundred sixty and thirty eight paisa) which he could not satisfactorily account for. Further, Shri Krishan Mohan Sharan entered into criminal conspiracy with Shri Anand Mohan Sharan by intentionally fabricating false evidence to legitimize the source of the aforementioned cash of Rs.36,00,000/- seized during the house search of Shri Anand Mohan Sharan. The aforesaid acts constitute commission of offences punishable U/s 13(2) r/w 13(1)(e) of PC Act, 1988 by Shri Anand Mohan Sharan and U/s 120B r/w 193 I.P.C. by Shri Anand Mohan Sharan and Shri Krishan Mohan Sharan and substantive offence thereof."

14. In the light of abovementioned material, we are called upon to critically evaluate and examine the judgment of the High Court. This exercise has been undertaken in order to arrive at objective assessment whether the High Court was justified in quashing the FIR and the charge- sheet in this case.

15. In the impugned judgment, the High Court after giving the basic facts of the case and recording of the submissions of the parties has given its findings. The relevant portions of the High Court's findings in the impugned judgment are set out in the succeeding paragraphs:

> "Therefore, according to the C.B.I., the plea of the petitioner that he had kept the sale proceeds of the two properties at his son's residence was not a valid plea as nothing prevented the petitioner to keep this amount as well as at his son's house if he was so concerned about the safety of his cash. I may say that Rs.75,000/- is quite small amount in comparison to Rs.36 lacs therefore, prosecuting the petitioner for this reason to my mind was not justifiable."

16. The High Court further observed as under:

> "It is not the case of the C.B.I. that the petitioner is not the owner of the properties nor is the case of the C.B.I., that the vendees were bogus persons. Rather charge sheet filed by the C.B.I. confirms the fact that during investigation, Shri Vijay Gulati one of the prospective buyers of the property of the petitioner had admitted that he had paid a part consideration towards the property to the petitioner but the C.B.I. still made the petitioner an accused on the ground that the denomination of currency notes described by Vijay Gulati did not tally with the currency notes recovered from the possession of the son of the petitioner. To my mind, this could not be the valid ground for implicating the petitioner."

17. Regarding provisions of section 193 IPC, the High Court observed as under:

> "17. Provisions of Section 193 of the Indian Penal Code purposes of being used in any stage of judicial proceedings. The entire investigation conducted by the investigators indicates that they did not probe into the fact if written documents such as agreement to sell, receipt, sale deed, post dated cheques were fabricated for the purposes of being used at the stage of judicial proceedings. On the contrary investigation conducted by the investigators in this regard fortifies the fact that the transactions with regard to the sale of two immovable properties of the petitioner actually did take place one with Vijay Gulati and another with Harmanjeet Singh and Anoop Singh and they had stated before the investigators that part of the amount had actually passed to the petitioner towards the part sale price of the two properties, yet the investigators suspected and merely on suspicion brought him in the dock. It shall be noteworthy to add here that the prospective vendees having come to know that the properties which were to be purchased by them had become a subject matter of criminal case, they filed civil suits in the High Court for cancellation of their agreements and for refund of their amount. This is one of the strong circumstances which favours the petitioner. The investigators felt that even this was done at the behest of the petitioner. If investigators were so sure about this then what prevented them from bringing these two parties in the criminal net as well. The prosecution appears to have hooked the petitioner merely on suspicion. The prosecution took note of the following circumstances, such as currency notes found from the son of the petitioner's house were in different denomination than what was described by the vendees, that the petitioner could not have legally sold this property without having sanctioned from the bank, that the sum of Rs.75,000/- was recovered from the house of the petitioner and he could keep this amount with his son if he was so concerned about the safety of his cash amount, that the petitioner had not deposited the said amount in the bank, that the petitioner sold the property for Rs.50 lacs particularly when its value was more than one crore. These reasons, according to my mind, were not valid reasons for prosecuting the petitioner."

18. On the basis of the aforementioned observations, the High Court came to definite finding that no criminal liability can be fastened on the respondent herein (and the petitioner before the High Court). The High Court further observed as under:

> “No criminal liability can be fastened to the petitioner who was not connected with the commission of main offence at all as co-conspirator nor can Section 193 of Indian Penal Code be attracted against the petitioner. Even otherwise if at all the version of the CBI is taken as correct then in that eventuality the Sub Registrar who executed the sale deed claimed to be fabricated should have been prosecuted and also the stamp vendor from whom the judicial stamp papers for the purpose of executing the sale deed and agreement to sell an ante dated should have been prosecuted as co-conspirators. The CBI in that case should also have proceeded against the vendees in whose favor the agreement to sell and sale deed were executed. The CBI did not do so because the CBI was not sure whether the documents produced by the petitioner to

show that the amount so recovered from the house of his son actually belonged to the petitioner it being the sale proceed of the transaction of property."

19. The High Court observed that the CBI in this case should have proceeded against the vendees in whose favor the agreement to sell was executed. According to the learned judge of the High Court, the CBI did not do so because the CBI was not sure whether documents produced by the respondent herein to show that the amount so recovered from the house actually belonged to the respondent's son.

20. In the impugned judgment, the High Court gave a clean chit to the respondent. The High Court observed as under:

> "What else weigh in my mind is that his son accused Anand Mohan Sharan was given only one day to produce such documents. This Court wonders if documents referred to above could be prepared overnight. However, these documents also included the cheques paid by the vendee towards the transaction of the property. While being interrogated he had there and then stated that the amount so recovered from his house actually belonged to his father which he had kept, he being alone and an old man and for safety purpose he had kept that amount with him. He was asked to bring proof in that regard next day which he brought before the investigator in the form of an agreement to sell executed between his father and the vendees and also the sale deed including the receipt and cheques which were of prior date of the date of alleged commission of present offence. I am of the considered opinion that the prosecution has no case against the petitioner he being not involved either in the commission of main offence or for creating the offence of fabricating the document."

21. In the concluding paragraph, the High Court observed that the respondent herein has been unnecessarily roped in a criminal case and it was a fit case where the court must exercise its inherent power under section 482 Cr.P.C. to quash the FIR No.RC.AC3/2003 A0003 dated 6.10.2003 registered against the respondent.

22. We have heard Mr. Gopal Subramanium, the learned Additional Solicitor General appearing for the CBI and Mr. Sushil Kumar, Senior Advocate on behalf of the accused respondent at length. We have also carefully perused the pleadings and the documents placed on record. Now, it is our bounden duty to examine whether on the facts and circumstances of this case and on the basis of the material available on record, the High Court were justified in quashing the FIR and the charge-sheet.

23. We deem it appropriate to recapitulate the legal position which has been crystallized by a series of judgments of the English Courts and the Indian Courts by referring to some of them. Discussion of decided cases:

24. The scope and ambit of the powers of the High Court under section 482 Cr.P.C. have been elaborately dealt with by a three judge Bench of this Court in the recent case of *Inder*

Mohan Goswami & Anr. v. State of Uttaranchal & Ors[1] This Court held that every court has inherent power to act ex debit justified to do real and substantial justice for the administration of which alone, the court exists, or to prevent abuse of the process of the court. Inherent power of the court can be exercised in the following categories of cases:

> "(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."

25. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

26. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. Director of Public Prosecutions*[2] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. *Lord Salmon in Director of Public Prosecutions v. Humphrys*[3] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the court's power to prevent such abuse is of great constitutional importance and should be zealously preserved.

27. In *R.P. Kapur v. State of Punjab*[4] this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

> "(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
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> (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
>
> (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

28. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court ought to exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

29. This court in *State of Karnataka v. L. Muniswamy & Ors*[5] observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would use of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

30. This *Court in State of Bihar & Anr. v. J.A.C. Saldanha & Ors.*[6] at 574 has disapproved the exercise of the extra-ordinary power of the High Court in issuing a prerogative writ quashing the prosecution solely on the basis of the averments made in the affidavit in the following words:

> "The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more."

31. The classic exposition of the law is found in *State of West Bengal & Ors. v. Swapan Kumar Guha & Ors*[7] In this case, Chandrachud, CJ in his concurring separate judgment has 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". Justice A.N. Sen who wrote the main judgment in that case with which Chandrachud, CJ and Varadarajan, J. agreed has laid the legal proposition as follows:

> "...the legal position is well-settled. The legal position appears to be 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, however, the materials do not disclose an offence, no investigation should normally be permitted.... Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. 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 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.... 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."

32. This court in *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors*[8] observed in para 7 as under:

"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 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 proceeding even though it may be at a preliminary stage."

33. In *State of Bihar v. Murad Ali Khan & Ors*[9] this Court observed that the jurisdiction Under Section 482 Cr.P.C. has to be exercised sparingly and with circumspection. The High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

34. Mr. Sushil Kumar, the learned senior counsel appearing for the respondent placed reliance on the case of *State of Haryana & Ors. v. Bhajan Lal & Ors*[10] He particularly laid stress on para 1 of the guideline in which this court observed that allegations incorporated in the FIR or the complaint, even if are taken at their face value and accepted in their entirety, would not prima-facie constitute any offence or make out a case against the accused. On analysis of this case, in our opinion, it really does not support the case of the respondent. The ratio of the judgment is clear that the extraordinary powers of the court under section 482 Cr.P.C. can be exercised only in exceptional circumstances where all allegations incorporated in the FIR or the complaint do not prime facie constitute any offence or make out a case against the accused.

35. In Bhajan Lal's case (supra), this court in the backdrop of interpretation of various relevant provisions of the Cr. P.C. 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 of the Constitution of India or the inherent powers under section 482 Cr. P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. This court in the said judgment made it clear that 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 to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following categories:-

> "(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."

36. This court in *Janata Dal v. H. S. Chowdhary & Ors*[11] observed thus:

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

37. This court in *Roy V.D. v. State of Kerala*[12] observed thus:-

"18. It is well settled that the power under section 482 Cr. P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 Cr. P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

38. This court in *Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr*[13] Observed thus:-

> "It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

39. In Indian Oil Corporation v. NEPC India Ltd. & Ors. (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged."

40. This Court in the case of *Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr*[14] has reiterated the legal position. The Court observed that the powers possessed by the High Court under Section 482 Cr. P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

41. Now, the crucial question which arises for our adjudication is whether the case of the respondent falls under any of the categories as enumerated in the celebrated case of Bhajan Lal (supra). On the basis of the material available on record and the allegations levelled against the respondent in the FIR and the charge-sheet, it cannot be concluded that no ingredients of offence under section 120B read with section 193 IPC are present in the instant case.

42. At this stage, the High Court in its jurisdiction under section 482 Cr. P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned court after the entire material is produced before it on a thorough investigation and evidence is led.

43. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations made in the First Information Report and

the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused (respondent herein).

44. In order to examine and evaluate the allegations of the FIR and the charge-sheet on this parameter, we deem it imperative to set out sections 193 and 120B of the Indian Penal Code under which the FIR and charge- sheet have been filed.

45. Sections 193 and 120B of the Indian Penal Code read as under:-

> "193. Punishment for false evidence.-Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. 120B. Punishment of criminal conspiracy.-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

46. On careful scrutiny and analysis of the allegations incorporated in the FIR and the charge-sheet set out in the preceding paragraphs of this judgment, it is abundantly clear that ingredients of sections 193 and 120B IPC are clearly made out in the instant case setting out a cognizable offence justifying the registration of a case and investigation thereon.

47. In our considered view, this case does not fall under any of the categories of cases formulated in Bhajan Lal's case (supra) relied upon by the respondent calling for exercise of extraordinary jurisdiction or inherent powers of the court to quash the FIR.

48. It would not be appropriate to comment or express any opinion on the truthfulness or veracity of the allegations incorporated in the FIR or the charge-sheet because we would not like the trial Court to be influenced by any of the findings of this Court or the High Court in the trial of this case. All what we can say without any hesitation is that on the basis of the averments and allegations incorporated in the FIR and the charge- sheet, the High Court was not justified in quashing the FIR/charge-sheet while exercising its extraordinary jurisdiction under section 482 of the Code of Criminal Procedure to stifle a legitimate prosecution.

49. We accordingly set aside the impugned judgment of the High Court. The appellant CBI would be at liberty to produce the necessary material and evidence before the concerned

court to establish the case of the prosecution against the respondent. Similarly, the respondent should be afforded full opportunity to establish his innocence. No further directions are necessary in this appeal.

50. The appeal is accordingly allowed and disposed of.

[1]*AIR 2008 SC 0251*
[2]*1964] AC 1254*
[3]*1977 AC 0001*
[4]*AIR 1960 SC 0866*
[5]*(1977) 2 SCC 0699*
[6]*(1980) 1 SCC 0554*
[7]*(1982) 1 SCC 0561*
[8]*(1988) 1 SCC 0692*
[9]*(1988) 4 SCC 0655*
[10]*(1992) Supp.1 SCC 0335*
[11]*(1992) 4 SCC 0305*
[12]*(2000) 8 SCC 0590*
[13]*(2005) 1 SCC 0122*
[14]*(2006) 7 SCC 188*