

SUPREME COURT OF INDIA

Vineet Kumar

Vs.

State of U.P.

Crl.A.No.577 of 2017

(A.K.Sikri and Ashok Bhushan,JJ.,)

31.03.2017

JUDGMENT

Ashok Bhushan,J.,

SLP(Crl.)No.287 of 2017

1. This appeal has been filed against the judgment dated 16.12.2016 of the High Court of Judicature at Allahabad dismissing the Application filed by the appellants under Section 482 Cr.P.C. Appellants had filed Application under Section 482 Cr.P.C. for quashing the judgment and order dated 03.08.2016 passed by Additional Chief Judicial Magistrate-IV, Moradabad summoning the appellants for an offence under Section 452, 376(d) and 323 IPC, as well as order dated 22.10.2016 passed by the District Sessions Judge, Moradabad dismissing the Criminal Revision filed by the appellants. The appellants shall hereinafter be referred to as accused and respondent No.2 as complainant. The facts of the case as emerged from the records need to be noted for deciding the issues raised in this appeal.

2. The accused have made several financial transactions with complainant, Smt. Rekha Rani, her husband, Akhilesh Kumar and her son, Ankur in the months of May, 2 015. Accused No.3 gave Rs.9 lakh to husband and son of the complainant for business purposes. An amount of Rs.7 lakh 50 thousand was given in cash to complainant and her husband by accused No.1. Further, husband of complainant received Rs.3 lakh 60 thousand in cash and Rs.2 lakh 4 0 thousand by cheque dated 2 9. 05.2 015 from accused No.1.

3. An agreement dated 29.05.2015 was signed by the husband of the complainant and accused No.1 acknowledging the payment of Rs.3 lakh 60 thousand in cash and Rs.2 lakh 40 thousand by cheque. A cheque of Rs.6 lakh was handed over by the husband of the complainant to accused No.1 to ensure the re-payment. Another agreement between the complainant and accused No.1 was entered into on 01.06.2015 wherein it was acknowledged that complainant and her husband had taken Rs.7 lakh 50 thousand in cash from accused No.1. Earlier, husband of complainant took Rs.6 lakh from accused No.1. Parties entered into an agreement agreeing with certain conditions. Third agreement was entered into between

the son of complainant and accused No.1 on 31.08.2015 wherein son of complainant acknowledged that his parents have taken an amount of Rs.14 lakh 50 thousand. Complainant and her husband gave cheques of Rs.6 lakh and Rs.8 lakh 50 thousand to accused No.1 drawn on Prathama Bank, Kanth Branch, District Moradabad for recovery of the amount given by the accused. Agreement noticed that the amount was borrowed with promise to return the amount. The agreements were written on Non-Judicial Stamp Papers which were not registered but contained signatures of the parties mentioned therein.

4. Accused No.3 filed a complaint under Section 138 of Negotiable Instruments Act being Complaint No.1587/2015 against husband and son of the complainant with the allegation that amount of Rs.9 lakh was paid to the opposite parties who had issued a cheque of Rs.9 lakh with the assurance that the amount will be repaid by 22.08.2016. It was stated by accused No.3 in the complaint that after lapse of time when the amount was not paid, the cheque was deposited which was returned back by the Bank with remark "No Sufficient Balance". When the opposite parties were contacted in this regard, the opposite parties told not come to them. After giving a notice on 05.09.2016, complaint was filed on 21.09.2015. Accused No.1 had also filed an Application on 29.09.2015 under Section 156(3) Cr.P.C. against the complainant, her husband and son. Cheque given by son of the complainant of Rs.6 lakh to accused No. 2 was also dishonoured. Complaint filed by accused No.1 under Section 138 of Negotiable Instruments Act was registered as Complaint No.3280/2015. Complaints against complainant, her husband and son were filed in the month of September, 2015 alleging dishonoured of cheque and complaint of non-payment of amount given to the complainant and her husband and son.

5. On 30.10.2015 complainant filed an Application under Section 156(3) Cr.P.C. against all the three accused alleging commission of offence under Section 376(d),323 and 452 IPC. In the application allegation was made against the accused that on 22.10.2015 at about 7.30 p.m. all the three accused came to the house of the complainant. At that time she was alone in the house. It was alleged that all the three accused started misbehaving with her. They beat her with stick, fist and kick. Thereafter, accused, Vineet and Nitendra raped her one by one while Sonu stood outside the room. When Sonu told them about arrival of complainant's husband, all the three accused fled away. It was further alleged that she went to the Police Station on the same day but the Police did not register FIR. An order dated 03.11.2015 was passed by the Additional Chief Judicial Magistrate-IV, Moradabad for registration and investigation to the concerned Police Station. On 06.11.2015, the First Information Report was registered being No.251/2015 at Police Station Kanth, District Moradabad under Section 376(d), 323, 452 IPC against the accused. After registration of the case, crime was investigated by Investigating Officer(IO). The IO recorded the statements of complainant, her husband and mother-in-law. Complainant in her statement repeated her allegation. It was further stated that she went along with her husband to Police Station but report was not lodged. On next day, she went to Government Hospital, Moradabad with her husband for medical examination. Doctor conducted medical examination to external injuries but refused to her internal examination. Husband and father-in-law of the complainant also recorded statements. They stated that before they arrived at the house, accused had already fled away. IO asked the complainant "as to whether now she is ready to get done medical examination",

husband of the complainant answered "no, now there is no benefit out of medical examination. Now, I don't want to get my wife's medical examination done as much time has been elapsed". When the husband was also asked some questions to get her wife medically examined following answers were given by the husband:

"Question – Now get the medical examination of hour wife done so that D.N.A. etc. proceeding could be done?"

Ans.- This occurrence is of 22.10.2015 in the evening at 19.30 hrs. and since then till now I have also have sexual intercourse with my wife several times. Thus, now there is no benefit out of medical examination and instead I myself will be positive."

6. Before the IO, complainant, her husband, father-in-law and mother-in-law all stated that at the time of occurrence there was no electricity.

7. The accused also recorded statement of various persons in support of the claim of the accused that at the time alleged by the complainant they were not present and till 9 p.m. they were with their friends in Dushehara Mela. IO recorded the statement of certain persons who stated that accused were with them till 9 p.m. on 22.10.2015.

8. Although, the complainant and her husband refused medical examination when they are so asked by IO on 07.11.2015, but she got her medical examination done on 20.11.2015. Pathology Report (filed at page 50 of paper book) stated as :

"No spermatozoa alive or dead are seen in the received smears within sealed envelope".

9. On 24.11.2015 complainant got her statement recorded under Section 164 Cr.P.C. In the statement the age of complainant was recorded as 47 years. In the statement the complainant repeated her allegations.

10. After statement under Section 164 Cr.P.C. was recorded, IO carried out detailed investigation by recording statements of brother of complainant's husband and his wife. Along with the complainant, the brother of her husband as well as his wife were also staying in the same house at the relevant time. The IO recorded the statement of Nikesh Kumar, brother of complainant's husband. It is useful to extract below the statement of brother of complainant's husband as recorded by the IO:

"Statement of Shri Nikesh Kumar son of Subhash Chandra Vishnoi resident of Mohalla Vishanpura, Kasba Kanth is present. Upon enquiry has stated that on 22.10.15 there was Dushehara Mela. I alongwith my children had gone to see Mela(Fair) and had returned back to my house at 5.00-5.30 p.m. Rekha Rani is my real Bhabhi (sister-in-law). There has been monetary transaction between Akhilesh and Vineet. Time to time my brother used to borrow a sum of Rs.Two lakh, four lakh

from Vineet and used to invest the same in his business and then used to return. Now there has been inter-se dispute among them owing to monetary transaction. On this dispute my sister-in-law Rekha has instituted case against Vineet and others. It is not good to mention such shameful Facts and my sister-in-law has not done good. There are young children in the family and there would be wrong effect of these acts. I have spade my brother Akhilesh and father have also scolded him. Now he is saying that mistake has been committed and whatever has occurred has occurred. I and my wife have gone to Court. Moradabad and have submitted our affidavit in the Court. We have mentioned the correct fact therein. We will tell the same fact in the Court that no such occurrence has taken place in our house. My Bhabhi Rekha has lodged a case in the Court out of anger which is a false case."

11. The wife of Nikesh Kumar, Smt. Bina Vishnoi also made the following statement before the IO which is the part of the Case Diary:

"Statement of Smt.Bina Vishnoi w/o Nikesh Kumar resident of Mohalla Vishanpura Kasba and P.S. Kanth is present. Upon enquiry, she has stated that on 22.10.15 there was Dushehara festival and we after seeing Dushehara Mela had returned back and came at our house at about 5.00 p.m. I had opened my shop. I have a grocery shop. Most of transaction takes place in the evening. Rekha is my elder real Jethani. My Jeth Akhilesh has monetary transaction with Vineet and others. He used to borrow money Rs. Two lakh, four lakh from Vineet to invest the same in his business and the returns the same. Now what has happened I do not know and inter-se dispute has cropped up among them and my Jethani has taken such a wrong step which does not happens in our house. Our family and the family of Vineet are the respected family of Mohalla and we have business and trade of lakh of rupees. We have spade an scolded them. Our children are also growing to be young. When you people visit it has effect on them. Now they are realising the mistake. No occurrence of rape etc. has happened in our house and in this regard the complete Mohalla will tender evidence. I have even appeared in the Court and submitted an affidavit and will tell the true fact in the Court.

Question- On 22.10.15 in the evening at 7.30 p.m. you were present at your room/shop the whether you have heard any cry or had seen Vineet coming or going?

Ans. - On 22.10.15 since 5.00 p.m. we were at our house and no one had come in our house and Rekha has informed us. No such occurrence of rape could take place in our house. You could enquire from our all neighbours. "

12. The affidavits were also given by Nikesh Kumar and Smt. Bina Vishnoi who were residing in the same house. Smt. Bina Vishnoi is also running a shop of General Store in one portion of the house. She stated that on the date of occurrence Rekha Rani was in her parental house to celebrate Dushehara and was not present at her house.

13. IO after completion of investigation and after taking into consideration the materials collected during the investigation came to the conclusion that no such incident took place on 22.10.2015 as alleged by the complainant. Final Report No.40/15 was submitted by the IO on 29.11.2015 which is to the following effect:

"The First Information Report in the above mentioned incident was registered on 6.11.2015 and the investigation was taken up by me. After recording the statement of the witnesses and inspection of the place of occurrence the allegation was found to be false by me. Therefore this final report No.40/15 is being submitted for your consideration."

14. After submission of Final Report on 29.11.2015 Police has also submitted a further report before the Additional Chief Judicial Magistrate for initiating proceeding under Section 182 Cr.P.C. against the complainant. Respondent No.2 moved Protest Petition dated 07.01.2016. It was allowed by the Addl.CJM on 28.05.2016. An Application under Section 482 Cr.P.C. was filed before the High Court. It was allowed and order dated 28.05.2016 was set aside directing the Magistrate to pass fresh order. The Magistrate passed again order dated 03.08.2016 summoned the accused. Revision was filed before the Sessions Judge against the order dated 03.08.2016 which was dismissed by order dated 22.10.2016.

15. The accused filed Application under Section 482 Cr.P.C. to quash the order dated 03.08.2016 and the order passed by the Sessions Judge. It was prayed by the accused that orders were passed without appreciating the evidence and material on records, they deserve to be set aside and the Protest Petition be rejected. The High Court refused the prayer for quashing the orders by making the following observations:

"From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submission made at the Bar relates to the dispute question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C. at this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in case of *R.P. Kapur Vs. State of Punjab*², *State of Haryana Vs. Bhajan Lal*¹, *State of Bihar Vs. R.P. Sharma*³, and lastly *Zandu Pharmaceuticals Works Ltd. Vs. Mohd. Saraful Haq and another*⁴ (par 10) The disputed defence of the accused cannot be considered at this stage."

16. Aggrieved by the above judgment of the High Court this appeal has been filed.

17. Learned counsel for the appellants contended that criminal proceedings initiated by the complainant in the facts of the present case was malafide and falsely initiated to save complainant, her husband and son from making repayment of the amount taken by them with regard to which complaint under Section 138 of Negotiable Instruments Act by the accused were already filed and pending. After registration of case on Application filed by the complainant under Section 156(3) Cr.P.C., the IO conducted thorough investigation by recording the statements of complainant, her husband as well as husband's brother and

brother's wife. Various affidavits were also received by the IO and after conducting investigation there was sufficient materials to come to the conclusion that a story of alleged rape was wholly false and no such incident had taken place as alleged by the complainant. He has submitted a Final Report in the case which ought to have been accepted by the learned Magistrate. It is contended that Protest Petition has been allowed without adverting to the material collected by the IO. The fact that the Application under Section 156(3) Cr.P.C. itself was filed after 8 days of alleged rape, there is no medical report to prove the alleged rape, these were sufficient to discard the allegations made by the complainant. Summoning of the accused of such serious offence cannot be a mechanical exercise in the facts and circumstances of the case and material collected during investigation which were part of the Final Report were required to be adverted to by the Court while rejecting the Final Report. Learned counsel submits that prosecution in the present case is a clear abuse of the process of the Court and deserves to be set aside in exercise of jurisdiction under Section 482 Cr.P.C. by the High Court.

18. Learned counsel appearing for the respondent No.2 refuting the submission made by the learned counsel for the appellants contended that no error has been committed by the Courts below in summoning the accused, there was statement under Section 164 Cr.P.C. of the complainant where she reiterated her case of rape by accused No.1 and 3. It is submitted that at this stage the Court was not required to marshal the evidence and examine the charge on merit and the High Court has rightly refused to exercise jurisdiction under Section 482 Cr.P.C. to quash the criminal proceedings.

19. We have considered the submissions made by the parties and perused the records.

20. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power 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.

21. This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in *State of Karnataka vs. L. Muniswamy and others*⁵, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In paragraph 7 of the judgment following has been stated:

"7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed 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. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

22. The judgment of this Court in *State of Haryana and others vs. Bhajan Lal and others*⁶, has elaborately considered the scope and ambit of Section 482 Cr.P.C. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Section 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately considered the scope of Section 482 CR.P.C. Article 226 in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain Categories of cases by way of illustration where power under 482 Cr.P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102 which enumerates 7 categories of cases where power can be exercised under Section 482 Cr.P.C. are extracted as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers 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 channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers 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."

23. A three-Judge Bench in *State of Karnataka vs. M. Devenderappa and another*⁷, had occasion to consider the ambit of Section 482 Cr.P.C. By analysing the scope of Section 482 Cr.P.C., this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to Produce injustice the Court has power to prevent abuse. It further held that 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. Following was laid down in paragraph 6:

"6 All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power

to prevent abuse. 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."

Further in paragraph 8 following was stated:

"8 Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal*."

24. In *Sunder Babu and others vs. State of Tamil Nadu*⁸, this Court was considering the challenge to the order of the Madras High Court where Application was under Section 482 Cr.P.C. to quash criminal proceedings under Section 498A IPC and Section 4 of Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 Cr.P.C. taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in *Bhajan Lal* case (supra) and held that the case fell within Category 7. Apex Court relying on Category 7 has held that Application under Section 482 deserved to be allowed and it quashed the proceedings.

25. In another case in *Priya Vrat Singh and others vs. Shyam Ji Sahai*⁹, this Court relied on Category 7 as laid down in *State of Haryana vs. Bhajan Lal*(supra). In the above case the Allahabad High Court had dismissed an Application filed under Section 482 Cr.P.C. to quash the proceedings under Section 494, 120-B and 109 IPC and Section 3 and 4 of Dowry Prohibition Act. After noticing the background facts and parameters for exercise of power under Section 482 Cr.P.C. following was stated in paragraphs 8 to 12:

“8. Further, it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6-12-1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of Respondent 1.

10. The parameters for exercise of power under Section 482 have been laid down by this Court in several cases.

11. "19. The section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It 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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and Substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to Prevent abuse. 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.

20. As noted above, 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. 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 being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and 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 will exercise its extraordinary jurisdiction of quashing the proceeding at any stage."

[See Janata Dal v. H.S. Chowdhary, Raghubir Saran (Dr.) v. State of Bihar and Minu Kumari v. State of Bihar, SCC p. 366, paras 19-20.]

12. The present case appears to be one where Category 7 of the illustrations given in State of Haryana v. Bhajan Lal is clearly applicable.

26. From the material on records, following facts are disclosed from the sequence of events which preceded the registration of FIR on 06.11.2015. The complainant, her husband and son had taken different amounts totaling Rs.22 lakh 50 thousand in the month of May, 2015 for business/shop purposes from the accused. Three agreements were written on Non-Judicial Stamp Papers on 29.05.2015, 01.06.2015 and 31.08.2015 wherein complainant, her husband and son have acknowledged receipt of the money in cash as well as by cheque. Cheques of Rs. 6 lakh, Rs.14 lakh 50 thousand were given to accused for ensuring the repayment. Cheques were drawn on the Prathama Bank, Kanth Branch, District Moradabad. Cheques were deposited in the Bank which were returned with endorsements "No Sufficient Balance". After cheques having been dishonoured, complaints under Section 138 of Negotiable Instruments Act were filed by the accused against the husband and son of the complainant which were registered in the month of September/October and were pending before alleged incident dated 22.10.2015.

27. The complainant alleges rape by the accused on 22.10.2015 at 7.30 p.m. at her house and alleges that on the same day she went to the Police Station but FIR was not registered. She states that after sending an application on 26.10.2015 to the SSP, she filed an Application under Section 156(3) Cr.P.C. before the Magistrate. There is no medical report obtained by the complainant except medical report dated 20.11.2015. IO on 07.11.2015 when asked the complainant to get medical examination done, complainant and her husband refused. The incident having taken place on 22.10.2015 at 7.30 p.m. nothing was done by the complainant and her husband till 26.10.2015 when she alleges the Application was sent to SSP.

28. During investigation, IO has recorded the statements of brother of complainant's husband as well as Smt. Bina Vishnoi, the wife of husband's brother who were residing in the same house and have categorically denied that any incident happened in their house. Both, in their statements and affidavits have condemned the complainant for lodging a false report.

29. IO collected affidavits of several persons including affidavits of Nikesh Kumar and Smt. Bina Vishnoi and on collecting the entire material and visiting the spot IO had come to the conclusion that no such incident took place and submitted a Final Report dated 29.11.2015. On 29.11.2015 itself, the IO has submitted another report for prosecution of complainant under Section 182 Cr.P.C. for giving false information to the Police.

30. After submission of Final Report and submissions of Report under Section 182 Cr.P.C. dated 29.11.2015 complainant filed a Protest Petition on 07.01.2016.

31. It is true that in the statement under Section 164 Cr.P.C, the complainant repeated her allegation. Complainant has also recorded her age in the statement as 47 years.

32. The Magistrate in allowing the Protest Petition only considered the submission made by the State while summoning the accused in paragraph 6 which is to the following effect:

” 6. In compliance with the order passed by the Hon'ble High Court and from the perusal of evidence and entire case diary this Court comes to the conclusion that the complainant is required to be registered as police complainant and there are sufficient grounds to summon the accused Vinit Kumar, Sonu and Nitendra for their trial under Section 376D, 323 and 352 of Indian Penal Code.”

33. Learned Sessions Judge has also affirmed order taking note of statement under Section 164 Cr.P.C.

34. There was sufficient material on record to indicate that there were financial transactions between the accused and complainant, her husband and son. On dishonour of cheques issued by the complaint's husband and son proceedings under Section 138 of Negotiable Instruments Act were already initiated by the accused. All family members of the complainant were living in the same house. Brother of husband and his wife, in their statements before the IO have admitted monetary transactions of his brother with the accused. The statements before the IO of both the Nikesh Kumar and Smt. Bina Vishnoi have already been extracted above, which were part of the Case Diary and was material which ought to have been looked into which was submitted by the IO in the Final Report.

35. The fact is that no medical examination was got done on the date of incident or even on the next day or on 07.11.2015, when IO asked the complainant and her husband to get done the medical examination. Subsequently it was done on 20.11.2015, which was wholly irrelevant. Apart from bald assertions by the complainant that all accused have raped, there was nothing which could have led the Courts to form an opinion that present case is fit a case

of prosecution which ought to be launched. We are conscious that statement given by the prosecutrix/complainant under Section 164 Cr.P.C. is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above. Reference to the judgment of this Court in *Prashant Bharti vs. State(NCT of Delhi¹⁰)*, is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Section 328 and 354 IPC with regard to the incident dated 15.02.2007. She sent a telephonic information on 16.02.2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21.02.2007 she gave a supplementary statement alleging rape by the appellant on 23.12.2006, 25.12.2006 and 01.01.2007. Statement under Section 164 Cr.P.C. of the prosecutrix was recorded. Police filed charge-sheet under Section 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Section 328/354 could be found. However, on the ground of statement made under Section 164 Cr.P.C. charge-sheet was submitted. Paragraph 10 of the judgment which notes the charge-sheet is as follows:

" 10. On 28.6.2007, the police filed a chargesheet under Sections 328,354 and 376 of the Indian Penal Code. In the chargesheet, it was clearly mentioned, that the police investigation, from different angles, had not yielded any positive result. However, the chargesheet was based on the statement made by the complainant/prosecuterix before the Metropolitan Magistrate, New Delhi under Section 164 of the Code of Criminal Procedure, which was found to be sufficient for the charges alleged - against the appellant-accused. A relevant extract of the chargesheet depicting the aforesaid factual position, is being reproduced below:-

"I the Inspector, tried my best from all angles to recover the intoxicating substance/Pepsi/Pepsi glass and undergarments worn at the time of the rape. But nothing could be recovered and for this reason, the blood sample of accused could not be sent to FSL. As from the investigation so far conducted, no proof could be found in support of the crime under Section 328/354 IPC and even the position of accused Prashant Bharti is not available at Lodhi Colony at the date and time as his mobile phone ill. However, prosecuterix Priya Porwal made statement on 21.2.2007 and on 27.2.2007 under Section 164 Cr.P.C. which is sufficient in support of his challan for the offence under Section 376 IPC."

(emphasis supplied)"

36. Writ petition was filed by the accused for quashing the FIR which was dismissed by the High Court on 27.08.2007. Thereafter, charges were framed on 01.12.2008. Dissatisfied with the framing of charges Criminal Revision Petition was filed which was dismissed by Delhi High Court on 16 . 01. 2009 . The order of Additional Sessions Judge has been extracted by this Court in paragraph 14 which is quoted below:

"14. Dissatisfied with the action of the trial Court in framing charges against him, the appellant-accused filed Criminal Revision Petition no. 08 of 2009, whereby he

assailed the order dated 1.12.2008 passed by the Additional Sessions Judge, New Delhi. The Delhi High Court dismissed the revision petition on 16.1.2009, by inter alia observing as under:-

"12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this Revision Petition is dismissed in limine while making it clear that anything herein shall not be construed as an opinion on merits at trial."

37. The appeal was filed against the aforesaid judgment of The High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the Court. In paragraph 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that Investigating Officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 Cr.P.C. In paragraphs 24 and 25 of the judgment following was stated:

"24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the Cr.P.C.

25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand - satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed."

38. Thus, above was the case where despite statement under Section 164 Cr.P.C. by prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal proceedings.

39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in *State of Haryana vs. Bhajan Lal*. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in *State of Haryana vs. Bhajan Lal*, which is to the following effect:

"(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."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the *State of Haryana vs. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings.

40. In the result, appeal is allowed, the judgment of the High Court dated 16.12.2016 as well as the order of Additional Chief Judicial Magistrate dated 03.08.2016 and the order of the Sessions Judge dated 22.10.2016 including the entire criminal proceedings are quashed.

Judgment Referred.

¹(1992) SCC (Cr.) 0426

²AIR 1960 SC 0866

³(1992) SCC (Cr.) 0192

⁴(2005) SCC (Cr.) 0283

⁵(1977) 2 SCC 0699

⁶(1992) Supp (1) SCC 0335

⁷(2002) 3 SCC 0089

⁸(2009) 14 SCC 0244

⁹(2008) 8 SCC 0232

¹⁰(2013) 9 SCC 0293