

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

**ON THE 19<sup>th</sup> OF JANUARY, 2023**

**MISC. CRIMINAL CASE No. 33397 of 2021**

**BETWEEN:-**

**DEEPAK GARG S/O SHRI MANNULAL GARG,  
AGED ABOUT 47 YEARS, OCCUPATION: BUSINESS  
1/1 SETH MISHRILAL NAGAR, DEWAS (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI AMIT AGRAWAL – SR. ADVOCATE WITH  
SHRI ARJUN AGRAWAL - ADVOCATE )**

**AND**

- 1. THE STATE OF MADHYA PRADESH  
STATION HOUSE OFFICER THROGUH P.S.  
CIVIL LINES, DEWAS (MADHYA PRADESH)**
- 2. RAMPRASAD SURYAVANSHI S/O LATE SHRI  
MANGILAL SURYAVANSHI, AGED ABOUT  
47 YEARS, 309, GANGA NAGAR, DEWAS  
(MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI VISHAL SANOTIA – G.A FOR RESPONDENT  
NO.1 AND SHRI YOGESH GUPTA – ADVOCATE FOR  
RESPONDENT NO.2 )**

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*This application coming on for hearing this day, the court passed the  
following:*

**ORDER**

The present petition is filed u/S.482 of Cr.P.C for quashment of the FIR and charge sheet in Crime No.0436/2018 for the alleged offence u/Ss.294, 506 IPC read with Sec.3(1)(r) and (s) of the Scheduled Castes & Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act 1989”) and all subsequent proceedings.

[2] This is second visit of the present applicant u/S.482 of the Cr.P.C. Initially on 15.10.2018 an FIR in Crime Case Number 436/2018 registered at Police Station Civil Lines, Dewas for the offences punishable u/Ss.294, 506 and 34 of the IPC read with Secs.3(1)(r) and (s) of the SC & ST Act 1989 and Sec.25/27 of the Arms Act against the present applicant and his father Mannulal Garg. Earlier along his father Mannulal Garg the applicant filed a petition u/S.482 of Cr.P.C seeking quashment of the FIR dated 15.10.2018. The said petition was disposed off by order dated 27.3.2019 with the following directions:-

*“Undisputedly, the advocate chambers are constructed in the premises of the District Court, Dewas and just adjacent thereto is the petrol pump being run by the petitioners. If there is any doubt or confusion as regards the dividing line through the boundary wall or barbed wire fencing, in all fairness, the respondent No.2 should have consulted the District Judge and sought assistance instead of picking up fight with petitioners.*

*9. Though there is substantial force in the submission advanced by the learned senior counsel for the petitioners, but, this Court is of the view that in the fitness of things, it shall be appropriate to direct the Superintendent of Police, Dewas for intervention in the matter and use his good office ensuring peace and tranquility settling the matter. If required, he may also seek guidance from the District Judge, Dewas as vulnerability of dividing line of boundary wall involves the ownership land of the petitioners and premises of the District Court.*

*At the same time, the Superintendent of Police shall also bestow conscious consideration upon the complaint filed by the petitioners vide Annexures P/11, P/12 and P/13 while carrying out directions of this Court and take a decision.*

*However, no coercive action shall be taken against either of the party.”*

[3] It is undisputed that the mediation between the parties failed and after investigation, the respondent No.1 filed a charge sheet against the present

applicant in the said case for commission of offence u/Ss.294, 506 and Sec.3(1(r) and (s) of SC & ST Act, 1989. The case was closed against co-accused Mannulal Garg and the charge sheet was not filed for commission of offences u/S.34 IPC and Sec.25/27 of the Arms Act. It is also not in dispute that the charges have yet not been framed by the trial court.

[4] The facts of the case are that wife of the petitioner owns a petrol pump namely M/S. Maa Kailadevi Motors which is situated on land comprising of Survey Nos.640, 645, 641 and 642, Patwari Halka No.18, Indore Dewas Road, Dewas. The District Court, Dewas premises is just adjacent to the land of petrol pump of the petitioner. The petitioner's land is separated from the district court premises by barbed wire fence. For the purpose of construction work, for the construction of Advocates Chambers in the District Court Dewas premises was under progress. The raw material of construction was dumped and parked on the main entrance gate of the District Court premises due to which heavy vehicles like trucks and dumpers could not pass through the main entrance gate. The respondent No.2 former president of Dewas District Court Bar Association requested the petitioner to temporarily permit the movement of vehicles carrying construction material into the District court premises through the petitioner's vacant land for a period of one month. It is stated that the petitioner in good faith accepted the request of respondent No.2 and removed the barbed wire fence for free movement of vehicles through their land in the district court premises temporarily. The said arrangement continued for a period of almost three months. The building material dumped near the main entrance of the district court premises was cleared, enabling movement of larger vehicles through the main gate. On 12.10.2018 the barbed wire fence was reinstalled as before. On 15.10.2018 at around 12 PM it is alleged that the respondent No.2 trespassed into the petitioner's land and without seeking permission or intimating the petitioner, started removing the barbed fence from the petitioner's land. The petitioner

was present at the spot and requested respondent No.2 not to remove the fence. By that time all the cement poles were removed except one. The allegation has been made that the respondent No.2 was very furious and launched an indecent assault on the petitioner by pelting stones towards the petrol pump and man handling the petitioner. The father of the petitioner made a complaint in writing to the respondent No.1 and a written complaint was also submitted by Manager of the Petrol Pump. It is alleged that the respondent No.2 made a complaint to District Collector, Dewas requesting to cancel the permit granted to the wife of the petitioner. The said application was rejected by the Collector. The appeal against the said order was preferred before the Divisional Commissioner which was also dismissed, thereafter a revision was preferred against the order of appellate authority which was allowed by the State government. Because of the said reason in order to take revenge from the petitioner, a false report has been lodged by respondent No.2 alleging that the petitioner along with his father entered the court premises and pointed gun against the respondent No.2 in the presence of about 50 advocates and then the petitioners conveniently fled away. Assailing the registration of FIR the petitioner along with his father co-accused Mannulal Garg filed petition u/S.482 of Cr.P.C contending that the ingredients of the offence u/Ss.294, 506/34 of IPC, Sec.3(1)(r) and (s) of SC & ST Act 1989 and Sec.25, 27 of the Arms Act are not contained in the FIR and no case is made out.

[5] After elaborate consideration of submissions of both the parties the High Court did not quash the FIR and disposed off the matter with the directions as reproduced in the preceding paragraphs. After the attempt to settle the dispute between the parties failed, the investigation was carried out by the respondent No.1 and after investigation, the charge sheet for commission of offences u/Ss.294, 506 of IPC and Sec.3(1)(r) and (s) of SC &

ST Act, 1989 has been filed. No charge sheet is filed against co-accused Mannulal Garg and no offence u/S.34 of IPC and Arms Act was found.

[6] Counsel for petitioner after referring to the FIR and the statements of witnesses recorded u/S.161 of Cr.P.C submitted that the ingredients of offence u/Ss.294, 506 IPC and Sec.3(1)(r) and (s) of SC & ST Act, 1989 are not present and there are material contradictions in the statements of the witnesses u/S.161 of the Cr.P.C. The petitioner has been falsely implicated in the present case and there is abuse of process of law and, therefore, the proceedings of Crime No.436/2018 for the alleged offence is liable to be quashed. It is vehemently argued that the ingredients of intention and knowledge for commission of offence under SC & ST Act, 1989 are not present in the complaint and the statements of the witnesses. In support of his submissions, he has placed reliance on the following judgments:-

- (1) *Pawan Kumar Vs. State of Haryana & another (1996) 4 SCC 17.*
- (2) *Manik Taneja & another Vs.State of Karnataka & another (2015) 7 SCC 423.*
- (3) *Gorige Pentalah Vs. State of Andhra Pradesh & others (2008) 12 SCC 531.*
- (4) *D.P. Vats Vs. State & Others 2002 SCC Online Del 571.*
- (5) *M.L. Ohri & others Vs. Kanti Devi 2009 SCC Online P&H 6388.*
- (6) *Deepa Bajwa Vs. State & Ors. 2004(77) DRJ 725.*
- (7) *Asha Aggarwal Vs. State 2014 SCC Online Del 1281.*
- (8) *State of Haryana & others Vs. Ch. Bhajan Lal & others AIR 1992 SC 604.*
- (9) *Dinesh Chandubhai Patel Vs. State of Gujarat & another (2018) 3 SCC 114.*
- (10) *Ramesh Rajagopal Vs. Devi Polymers Private Limited (2016) 6 SCC 310.*
- (11) *Vineet Kumar & others Vs. State of Uttar Pradesh & another (2017) 13 SCC 369.*
- (12) *Inder Mohan Goswami & another Vs. State of Uttaranchal & others (2007) 12 SCC 1.*

[7] Counsel for State and respondent No.2 submitted that after failure of attempt to settle the dispute, the investigation was carried out and a CCTV footage which was installed in the petrol pump of the applicant was seized by panchnama which is at page No.76. It is recorded in the panchnama that the present petitioner is seen at the spot. The entire CCTV footage was deliberately not made available by the petitioner to the prosecution. However, on the basis of CCTV footage and statements of witnesses prima facie case has been found in the investigation against the petitioner u/Ss.294, 506 of IPC and Sec.3(1)(r) and (s) of SC & ST Act 1989. The charges have yet not been framed and the petitioner will get an opportunity to argue on the framing of charge before the trial court. This Court has not quashed the FIR in the first round of petition u/S.482 of Cr.P.C and the scope of interference u/S.482 is limited.

[8] I have heard the learned counsel for parties and perused the record.

[9] So far the law in relation to scope and ambit of Sec.482 Cr.P.C has been elaborately considered by the Supreme court in the case of *Bhajan Lal* (supra) and in the other judgments by the Apex Court referred by learned Senior Counsel for the petitioner wherein it is held that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. In para 108 of the judgment of *Bhajanlal* (supra), the Apex Court has culled out the principles for quashment of FIR u/S.482 of Cr.P.C or under Article 226 of the Constitution of India. In para 109 the court has observed a note of caution to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The para 130 of judgment of *Bhajanlal* (supra) reads as under:-

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

[10] The Apex Court has considered the scope and ambit of Section 482 Cr.P.C for quashment of FIR, complaint and criminal proceedings in the following judgments:-

In *Kamaladevi Agrawal Vs.State of W.B. (2002) 1 SCC 555*, the Apex Court opined:

*“This court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.”*

In the case of *R.Kalyani Vs. Janak C.Mehta, (2009) SCC 516*, the Apex Court laid down the law in the following terms:

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

*(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and , in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.*

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

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

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

[11] The aforesaid legal position has been reiterated in the case of *Mahesh Chaudhary Vs. State of Rajasthan and another* (2009) 4 SCC 439. Relevant paras 11 and 12 are reproduced as under:

*“11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceedings is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.”*

*12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the*



*ingredients of the offences alleged against the accused.”*

[12] In the case of *Amit Kapoor vs. Ramesh Chander and another*, (2012) 9 SCC 460, the Apex Court has culled out certain principles to be considered for proper exercise of jurisdiction with regard to quashing of the charge either in exercise of power under Section 397 or Section 482 of the Cr.PC, or together, as the case may be. The principles laid down by the Apex Court in paras 27.1, 27.2, 27.3 and 27.6 are reproduced as under:

*“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases.*

*27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

*27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

Xx xx xx xx

Xx xx xx xx

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*”

[13] The same view has been reiterated by the Apex Court in a latest judgment of *Asian Resurfacing of Road Agency Pvt.Ltd. and another. Vs. Central Bureau of Investigation, AIR 2018 SC 2039*. Para 100 reads as under:

“100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (*Vide State of Karnataka V. L. Muniswamy (1997)2 SCC 699*): (*AIR 1977 SC 1489*) *All India Bank Officers’ Confederation V. Union of India (1989) 4 SCC 90*: (*AIR 1989 SC 2045*) *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia (1989) 1 SCC 715*, *State of M.P. Vs. Krishna Chandra Saksena (1996) 11 SCC 439*) and *State of M.P. Vs. Mohanlal Soni (2000) 6 SCC 338*): (*AIR 2000 SC 2583*)”

[14] Relying on the aforesaid judgments a division bench of this Court at Jabalpur in *M.Cr.C. No.51211/2018 Nandlal Gupta Vs. Union of India* held that High Court’s power to quash criminal proceedings should be exercised

sparingly and rarest of rare cases. Reliability of allegations made in the FIR or complaint not to be examined. The division bench further held the scope of interference u/Ss.482 for quashing of charger sheet, High Court should not unduly interfere. No meticulous examination of the evidence is needed at this stage. The court has to see as to whether the material brought on record reasonably connects the accused with the offence. Nothing more is required to be noted.

[15] In the light of aforesaid enunciation of law and the fact that the charges are yet to be framed in the trial and the applicant will have an opportunity to make his submissions at the time of framing of charge, I am not inclined to interfere at this stage u/S.482 of Cr.P.C. The petition is dismissed.

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

VM