

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) NO. 362/2022

CrIM NO. 1952/2022.

Reserved on: 30.09.2022

Pronounced on: 17.11.2022

.....Petitioner(s)/Appellant(s)

Through: Mr. Salih Pirzada, Advocate

V/s

UT of JK and others

..... Respondent(s)

Through: Ms. Asifa Padroo, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

1. Through the medium of this petition, the petitioner is challenging the Verification No.09/222, of Anti-Corruption Bureau (NK) and prays that the same may be quashed. The petitioner also prays that respondent nos.1&2 may be directed to hold an enquiry into the matter against respondent nos. 5 to 7.
2. The case set up by the petitioner is that an anonymous complaint bereft of any particulars of the complainant was addressed to Respondent-Anticorruption Bureau (for short "ACB") on 25.02.2021, leveling several allegations therein and that Additional Deputy Commissioner, Baramulla, addressed a communication bearing no. ADCB/DVO/ 2022-23/70 dated 30.04.2022, to respondent-ACB, in response to a communication addressed on 10.06.2021, seeking to enquire in furtherance to the complaint, intimating therein that the allegations contained in the complaint are baseless and upholding the

impeccable service career of the petitioner and has placed on record copy of the communication No. ADCB/DVO/2022-23/70 dated 30.04.2022, along with the report of the Tehsildar dated 20.04.2022. It is also stated that the respondent no.4 on 16.06.2022, addressed two communication to the Deputy Commissioner, Baramulla, seeking the property statement, salary statement, contact number net Salary/GPF details, posting details etc. of the petitioner. It is further stated by the petitioner that while being posted in Rural Development Department on the position of Block Development Officer for Block Singhpora, District Baramulla, in the year 2018, she was approached by the Respondent no.7 (Rafiq Ahmad) compelling the petitioner to meet him by making the inappropriate advances and employing threats of using the office of ACB (the then Vigilance organization) to the detriment of the service of the petitioner in the event demands were not met. It is submitted that the respondent no. 6 along with the Respondent no. 7 have been persistently making such inappropriate demands and the non-fulfillment of which has resulted in the unmerited investigation/inquiry launched against the petitioner. In this regard, it is submitted that the petitioner recently submitted a detailed complaint to the Ministry of Home Affairs, Government of India, in June, 2022, elucidating the role of Respondent nos. 5 to 7 in harassing the complainant/ petitioner by using the criminal investigative system. It is learnt that pursuant to the aforesaid complaint, the General Administration Department has officially launched an inquiry against Respondent nos. 5 to 7. It is also submitted that the petitioner is being illegally implicated in a false and a frivolous case under Verification

No. 09/2022, Police Station, ACB, although the petitioner being a responsible officer, is discharging her duties with honesty, dedication and integrity. It is submitted that the petitioner has been exonerated by the Additional Deputy Commissioner, Baramulla, in response to the communication of the ACB, after the thorough enquiry and has communicated to the ACB that the petitioner is having impeccable integrity and there is no question of being her involved in corrupt practices. However, the petitioner despite exoneration by the Additional Deputy Commissioner, Baramulla, is being harassed by the Investigating Officer and Senior Superintendent of Police of the ACB for the ulterior motives in order to have illegal favours from the petitioner.

3. Respondents have filed the status report, wherein they have stated that ACB J&K received about six different complaints against petitioner and other officers/officials of Block Singhpora with different allegations ranging from abuse of official position, embezzlement of the Government funds in MGNREGA, Swatch Bharat Mission, releasing payments without execution of works in block Singhpora, taking bribe and commission for releasing payments of people under MGNREGA, diversion of Govt. funds from intended purpose, working for some specific people, taking bribe through staff VLW, GRS etc. The complaints pertain to her postings in District Baramulla especially her posting as Assistant Director Food Baramulla, Block Development Officer Singhpora District Baramulla and her tenure as BDO Pattan Baramulla.

4. The brief details of these complaints and action taken by ACB have been given by respondent-ACB in the status report, which is reproduced hereunder:-

“Complaint No. 1: That on 26.12.2018 first complaint was received by ACB titled complaint against BDO Singhpora)

lodged by one Aijaz Ahamd Dar S/o Gh. Mohd Dar R/o Rakh-i-Duslipora Singhpora alleging therein that BDO is indulging in illegal gratification, illegally/fraudulently executed some works etc. The complaint was forwarded by ACB Headquarters to Director Rural Development Department Kashmir vide No. ACB-RD-G-24/19-1261 dated 18-01-2019 for conducting enquiry into the matter & furnishing report. The report is awaited from Departmental Vigilance Officer RDD Kashmir.

Complaint No. 2: That on 17.09.2020, second complaint was received by ACB titled complaint against officers/officials of Rural Development Block Singhpora regarding embezzlement in MGNREGA funds of R. 1.99 lakhs during the period when

was posted as BDO Singhpora so lodged by Ali Mohd and Gh. Mohd both residents of village Hanjiwera Payeen Pattan District Baramulla which was again forwarded by ACB Headquarters vide letter No. ACB-RD-G-16/21-2513-14 dated 09.02.2021 to District Vigilance Officer Baramulla for report into the matter. The report from concerned DVO has been received by this office which is under examination.

Complaint No. 3: That on 12.01.2021, third complaint was received against BDO when remained posted, JE, Farooq Ahmad online clerk and Sarpanch of RDD block Singhpora lodged by Ali Mohd Dar and others alleging therein receipt of bribe by BDO through online clerk, JE and Sarpanch in releasing funds under SBM scheme, the poor people were neglected and those well off were given benefits under scheme by these officers/officials etc. requested for taking strict legal action against them. This complaint was also forwarded to DVO by ACB Hqrs vide No. ACB-RD-G-119/21-12420 dated 18.06.2021, for enquiry and report within month. The report from concerned DVO has been received by this office which is also under examination.

Complaint No. 4: That on 18.01.2021, fourth complaint was received by ACB against BDO when remained posted, JE, VLW, GRS & officers/officials of RDD block Singhpora lodged by inhabitants of village Hayibug Tanghoo Block Singhpora through Sajad Ahmad & others, alleging therein corruption in allocation under Swach Baharat Mission scheme by BDO, VLW, JE concern and demanded legal action against them. This complaint was also forwarded to DVO by ACB HQ vide No. ACB-RD-G-119/21-12420 dated 18-06-2021 for enquiry and report within month. The report into the matter has been received from concerned DVO which is also under examination.

Complaint No.5: That on 26-03-2021, fifth complaint was received by ACB against BDO Rural Development Department block Singhpora when remained posted lodged by one Gh Mohi ud-din Dar S/O Gh Rasool Dar R/O K.P Payeen Singhpora &

others alleging therein irregularities in release of benefits under SBM scheme from 2018-2021 to beneficiaries of Halqa K.P Payeen etc this complaint was again forwarded by ACB Headquarters to DVO Baramulla vide RD-G-157/2021 for report into the matter within one month. The report into matter has been received by this office from concerned DVO which is also under examination.

Complaint No. 6: That sixth complaint dated 25-02-2021 was received by Anti Corruption Bureau J&K from complainants namely Abdul Hamid, Gh Rasool both resident of Singhpora District Baramulla against BDO Singhpora for indulging in different & multiple acts of corruption and bribery and taking bribes and commission from public in lieu of services, accumulation of disproportionate assets etc. The allegations in the complaint were very serious in nature with specific mention of amassing of assets by the officer during her tenure as Assistant Director Food Baramulla and BDO Singhpora District Baramulla.

The contents of the complaint are reproduced in verbatim as under:-

“Sub: complaint against as BDO and AD food. With due regards we residents of Singpora want to draw your kind attention towards the above mention subject and to inform you that the above mentioned official is looting the poor people of the area by charging Rs. 15000 to 20,000 per work which are not in actual plans proved and has done hundreds of works of such nature in the area in addition takes 10% on account of approval and passing of bills and never releases any bill without taking money. Through these illegal and unethical work practices the official has accumulated wealth both in the form of immovable property (in the form of bungalows, land plots, complexes) and movable property (bank accounts, cars) worth crores. His record in the food department also need to be verified. Therefore it is requested to your office that necessary investigations and enquiry be taken up to verify the assets of the official accumulated by illegal means to save the poor of the area.”

On receipt of this sixth complaint, ACB Headquarters requested District Vigilance Officer (DVO) Baramulla vide Office Letter No. ACB-RDG-87 /21-11274 dated 10-06-2021 for conducting enquiry and submitting report. In this regard report from DVO 30-04-2022 was received by ACB HQ on perusal of the report it was found that the report was inconclusive. As the DVO in its report has relied solely on the submissions of the lady officer without collecting any details of assets /expenditures/income/Benami etc accordingly decision was taken by ACB to consider this matter as part of Verification No.BKB-09/2022 thereof as allegations in this complaint were mainly for possession of disproportionate assets and the DVO has also concluded its report with remarks “unless proved otherwise” which implies scope for further enquiry in the same matter.

Complaint No.7: Meanwhile when the reports in rest of the complaints forwarded to District Vigilance Officer for enquiry were awaited from DVO/Director Rural Development Kashmir,& other reports were being examined for taking further course of action a fresh credible information was received by the ACB Headquarters on 30-05-2022 against (KAS), again with serious

and multiple allegations of abuse of official position, indulging in corruption/bribery, allegations of misappropriation of Govt. funds in the garb of execution of developmental works, causing loss to state exchequer & accumulation of disproportionate assets.

The contents of the information received are reproduced in verbatim as following.

“There are allegations of malpractices against (KAS), BDO Pattan and her activities have caused considerable loss to the exchequer.

a) The officer remained posted as Block Development Officer, Block Singhpora from 15 Mar, 2015 to 15 Oct, 2021 during her tenure she is alleged to have misappropriated government funds in the name of executing developmental works in her area of jurisdiction and this way earned huge sums of money.

b) While being posted in the Block, she came in contact with one Mohammad Shafi Rather S/O Mohammad Sultan R/O Wanigam Payeen, Pattan who is working as a salesman in CAPD Department. He is considered to be very close to the officer and his services were utilized by her in sale and purchase of land in the area. This way huge profits were made by the officer.

c) As per reports, thirty kanals of land from one Sant Singh have been purchased by the officer through one Manzoor Ahmad Bhat @ Munna Draal near Bhat Complex, Hartrath Singhpora (mutation of this land has not been done so far). Besides, the officer has purchased one more kanal of land at Singhpora. The officer has reportedly constructed an approach road to this land under MGNREGA scheme and approximately rupees 2.80 Lakhs have been expended for the purpose out of government funds.

d) Reports further reveal that for the construction of a ground in the state land at Bhat Colony an amount of Rs. 46.00 Lakhs (government funds) has been earmarked. So far Rs.26.00 Lakhs have been shown expended on earth filling of the ground, however, no major work is discernible at this place. The work was executed through Shabir Ahmad (Sarpanch Halqa Hartrath) and a major percentage of the amount has been allegedly shared by both the BDO and the Sarpanch. There is no significance of the ground for the locals and it would only help Manzoor Ahmad Bhat @ Munna Draal who runs a Dawn Public School adjacent to the ground in partnership with the said BDO.

e) The officer has also constructed a shopping complex near Degree College, Baramulla which has been registered in the name of her father. The corrupt practices by the officer and apparent patronage she is providing to her conduits is detrimental to government functioning.”

That on receipt of this information against , Anti Corruption Bureau Headquarters J&K ordered instant DA verification No. 09-2022 vide communication No. ACB-Veri-BKB-09/2022/E-162522/ 10961 dated 30-05-2022 into the allegations of accumulation of disproportionate assets by .KAS as information given was clear and prima facie in nature and continuously complaints were received against her by the Bureau with serious allegations of criminal misconduct, indulging in corruption, bribery etc.

This was seventh most credible & incriminating information on the basis of which ACB ordered instant verification for probing DA allegations against her. The procedure for conducting assets

probe i.e. DA probe has been laid down in the J&K Vigilance Manual 2008 approved by Govt of the J&K vide No. GAD/Vig/22-Adm/2008 dated 20-06-2008 and various circulars issued by ACB Haqrs from time to time and the law laid down by Hon'ble Supreme Court of India in various judgments delivered on DA probes conducted by various agencies CBI/ACB of different states which is being followed in the instant case.

5. The respondents have given brief details about the petitioner, which are reproduced as under:

“During the probe, the service details of the lady officer were obtained and it was found that

has been appointed into Kashmir Administrative Services on 08/04/2011 and after initial training remain posted at various places including Assistant Director Food Baramulla, BDO Singhpora, BDO Pattan, it was during this period that most of the aforementioned complaints were received against her wherein the allegations of indulging in abuse of official position, corruption, misappropriation of Govt. funds etc. have been made against her.

It was also found during the probe that she was recently placed under suspension when she was posted as BDO Singhpora Baramulla for excess withdrawal of MGNREGA funds allotted by the Govt. of J&K vide Order No.143-RD & PR of 2021 dated 11-06-2021 titled “withdrawal of funds in excess from e FMS account by the District Baramulla and District Anantnag under MGNREGA-suspension of BDO’s.

It is also apt to mention here that her close associate namely Mohd Shafi Rather a class IVth employee in CAPD with whom it has been mentioned in the source input that she is having Benami property has already two FIRs registered against him, one in ACB under FIR No 05/2020 and other in Crime Branch under FIR No. 07/2020 as well as a separate DA verification No. 06/2022 at ACB and same are under probe against Mohd Shafi Rather. She for most time period of her service remained posted in her home District and recently was transferred by Govt. from BDO Pattan, Baramulla to Deputy Director, District Employment and Counseling Centre, Srinagar. In view of these facts and the fact that already six complaints were received by this Bureau against her & other officials working with her and which were forwarded to DVO for probe, in addition to the instant credible information, it is indicative that the reputation of the officer is not good.”

6. After giving details about the petitioner, the respondents in the status report, have given the details of ancestral property of petitioner, agriculture/horticulture income, income from salary, scrutiny of the

bank accounts, huge expenses made during check period, allegation of benami property, which are given as under:

“IV. Ancestral Property:

It was found during the probe that she was having 06 kanals and 04 marlas of ancestral land along with other shareholders & the following properties have been shown acquired through gift and court decree by her mother which are also subject matter of probe, as under what circumstances these were acquired .During further probe, vide this office communication No. ACB-NK-FAK-3168 dated 25.06.2022 the details of property (ancestral, purchased, owned and possessed) by the said public servant were sought from Tehsildar Baramulla. The report received from the said office in this regard vide letter No. Teh/Bla/ 0Q/894 dated 07.07.2022 revealed that Raziya Akhtar W/o Inayatullah Saraf R/o Khawaja-Bagh Baramulla has three daughters namely

The report further revealed that land measuring 05 kanals 04 marlas comprising of Survey No. 685 (02 kanal 13 marla) and Survey No. 686 (02 kanal 11 marla) is recorded in the name of (mother of) bearing Mutation No. 514 dated 21-08-1982 as Court Decree. More so, land measuring 01 kanal comprising of Survey No. 1772/674 min is recorded in the name of (sister of) bearing Mutation No. 1633 dated 03-05-2012 as gift. A two storied residential house and a five storied shopping complex exists in the above mentioned survey numbers. The ownership and connected issues with the assets are being examined in the instant DA verification.

V. Agriculture/Horticulture income:-

During the probe conducted so far it has been found she possess 06 kanals and 04 marlas of ancestral land along with other share holders which is non agricultural in nature (Bagh-e-Khuski). No income from Agriculture/Horticulture was found during the probe conducted so far.

VI. Income from Salary :-

During the course of probe it was found that the officer was not having any other legal/known source of income except her salary, which has been worked on the basis of salary statements for the check period to the tune of Rs. 67,85,682/-. The saving from salary after deduction of verifiable kitchen expenses 1/3 of the NET salary as per laid down norms is under examination.

VII. Immovable asset in the shape of five storeyed Shopping Complex:

As per the allegations the suspect public servant has constructed five storied shopping complex at Khawjabagh Baramulla. During probe its period of construction as per the engineering expert examination has been found to be between the years 2016 to 2021, which falls during her service period. It is pertinent to mention here that the lady officer has willfully

concealed & falsely declared before the DVO that said property was constructed before her maturation in order to get favourable report, besides, the value of this five storey shopping complex is being assessed through the experts from the engineering wing of ACB Kashmir & has been valued more than one crore.

VIII. Scrutiny of the Bank Account details:-

During the course of probe conducted scrutiny of the statements of the bank account maintained and operated by the suspect officer as salary account in J&K Bank Khawajabagh Baramulla, it has been revealed that huge suspicious transactions (i.e. cash deposits, transfers, credits into and debits from the accounts) other than the salary have been made. During the probe these are being examined to ascertain source of such transactions/expenditures made by the officer. During probe some more bank accounts are being examined.

IX. Huge Expenditures made during Check Period:-

During probe, perusal of the Bank account statement of the lady officer it has been revealed that the suspect officer has made huge expenditure over and above her earning from salary/saving which are being examined. The probe conducted so far huge number of suspicious bank transactions have been identified and are also under examination.

X. Allegations of the Benami property to be probed:-

As per the allegations of complaint and information collected during the probe in the instant DA verification, the following Benami Assets of the officer are being probed:

- A. Thirty kanals of land purchased from one Sant Singh through one Manzoor Ahmad Bhat @ Munna Draal near Bhat Complex, Harthrath Singhpora;
- B. Purchase of one kanal of land at Singhpora, Pattan;
- C. Possession of Dawn Public School on partnership basis with Manzoor Ahmad Bhat @ Munna Draal at Harthrath Singhpora;
- D. Possession of a plot of land measuring about 04 kanal 15 marlas at Revenue Estate Rajbagh Srinagar and
- E. A residential house at Hyderpora Srinagar with her class IVth associate Shafi Rather.
- F. A residential house now sold out at Parimpora Srinagar with her class IV' associate Shafi Rather.
- G. Petrol Pump in partnership with Mohd Shafi class IVth employee CAPD.
- H. Property /House at Jammu in partnership with class IVth Mohd Shafi employee CAPD.
- I. Land at Bhat Colony Baramulla purchased in partnership with Mohd Shafi class IVth.
- J. Other Benami investments, Bank accounts, lockers etc.

It is humbly submitted that in the absence of further probe, the Benami Assets which are suspected to have acquired by the said suspect public servant are yet to be ascertained. It is pertinent to

mention here that the scrutiny and examination of huge bank transactions as mentioned above prima-facie disclose huge assets/expenditure disproportionate to the known source of the suspect officer which needs thorough probe for logical conclusion of the same.

The facts and circumstances enumerated above clearly depict that the suspect officer in order to thwart the process of law followed by the ACB regarding the conducting of probe into the allegations of acquiring of disproportionate assets, has filed the instant writ petition based on frivolous and concocted allegations against the officers of Anti Corruption Bureau. She has done same on behest of one her aides who is a class [Vth employee and the probe is being also conducted against him also for possessing disproportionate/Benami assets in a separate matter besides, there are two cases of embezzlement and misappropriation one under investigation with Anti Corruption Bureau having FIR No.05/2020 and another with Crime Branch Kashmir, FIR No.07/2020.”

7. It is also stated by respondents in their status report that Mohammad Rafi, Dy.S.P., against whom petitioner alleges demand of sexual favour since 2018 is not conducting any enquiry in any matter linked with her and has no occasion to contact petitioner and that instant impugned verification is being conducted by Inspector Farooq Ahmad and same is being conducted as per laid down Vigilance Manual and procedure applicable in such enquiries. It is also stated by respondents that petitioner was never called to the office of ACB in person during the probe of the instant verification as such, the question of harassment does not arise at all. However, as per laid down procedure the officer was communicated through Deputy Commissioner Baramulla for furnishing the service details of the suspect related to her salary/GP Fund, posting etc so as to process the probe into the instant verification. As the very basis of DA is failure of the suspect officer to account for the assets/expenditures he/she acquired during check period, accordingly the petitioner was given opportunity to furnish the details of all her income, expenditures, bank

details, investments, plots, ancestral property other assets . In this regard property Statements as per standard practice were also forwarded to officer through Deputy Commissioner Baramulla with the request to get these filled from the petitioner and return the same after filling the property details. It is also stated that the details/property statement were not received by respondent-ACB so far despite lapse of considerable period of time. It is also submitted by respondents that a concocted/false complaint with *mala fide* intent was filed by the petitioner to divert the agency from basic issue, i.e. DA probe initiated against her by ACB as per law and therefore in order to culminate the probe in the disproportionate assets verification on merits, petitioner may be permitted to conduct further probe.

8. I have heard learned counsel for parties and considered the matter.
9. The learned counsel for the petitioner has submitted that the petitioner cannot be subjected to unmerited and biased enquiry or investigation launched at the behest of Respondent nos.5 to 7 in colourable exercise of the official duty and that the impugned inquiry has already been closed since the lodging of the anonymous/frivolous complaint on 25.02.2021 as the same being dispelled through the official correspondence. It is also submitted by the learned counsel for the petitioner that the impugned inquiry undertaken is without any jurisdiction as being devoid of any legal basis and initiated for an ulterior purpose under the garb of investigation and the petitioner has an enforceable right against being subjected to such inquiry the purpose of which stands vitiated under the efflux of law and that the presumptive nature of bias being associated with the impugned

inquiry initiated pursuant to an anonymous complaint is without any legal sanction and cannot be permitted to sustain. He also states that the investigating officers associated with the impugned inquiry are incapacitated with the association of bias in law and cannot be permitted to subject the petitioner to an unfair investigation. It is also stated by the learned counsel for the petitioner that the impugned inquiry initiated at the behest of the anonymous complainant and being devoid of any credentials to satisfy the requirements of a lawful complainant cannot be permitted to initiate the illegal prosecution against the petitioner. It is also submitted that the genesis of the impugned inquiry emanates from the impugned complaint, cognized by the investigating agency is barred under law to be proceeded from and the protection granted to public servants is immune from the projections of anonymous complaints and cannot be permitted to hinder or place an embargo on the functioning of the petitioner. It is further submitted that the Prevention of Corruption Act, 1988 postulates impermeable protections of public servants with the object of curtailing frivolous complaints and the legislative presumption is always in favour of the public servant and the impugned inquiry under guise of inquiry cannot be permitted to circumvent the statutory protections and any violation thereto renders the impugned inquiry without any justification in law and liable to be set at naught. It is further stated that the impugned inquiry by the efflux of bias and the protection provided under the Act of 1988, is rendered otiose. In this regard, it is submitted that the enquiry has been launched in absence of any prior permission granted by the Government and the same

cannot be permitted to be undertaken by the Respondent-Investigating agency. The learned counsel for the petitioner has also submitted that the primary object of granting such protection is to insulate the public servants from the illegal effects of an unsustainable enquiry. The scope of preliminary enquiry being widened to such an extent can render the protections under Section 19 distant, and to safeguard any enquiry has been subjected to the permission of the Government and that the impugned enquiry being launched in absence of such permission is devoid of any legality and is hence liable to be set aside. He also states that the mobilization of the investigation being an outcome of the bias, is an abuse of the process of law and such a practice is discouraged by various judicial pronouncements which impair the functioning of the public officials leading to demoralization and undue harassment and that since there are no prospects of conviction on the basis of material placed on record nor the same can be foreseen from the legality of investigation, therefore, the enquiry/investigation conducted against the petitioner cannot be countenanced under law and the inherent jurisdiction of this Hon'ble Court is sought to remedy the wrong. It is also stated that the ACB during the probe has not followed the Circulars of General Administrative Department and the Central Vigilance Commission whereby the clear guidelines have been issued with regard to the complaints to be registered against the Government servants and other officers. In this regard, it is submitted that there are clear guidelines issued by the General Administration Department and Central

Vigilance Commission with regard to complaint to be registered and to be investigated upon.

10. The petitioner seeks exercise of inherent powers under Section 482 Cr.P.C. to quash the impugned verification. Thus, it would be appropriate to say that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code, to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceedings against accused and the court cannot look into materials, acceptability of which is essentially a matter for trial.

11. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in *Rajiv*

Thapar v Madan Lal Kapoor, 2013 (3) SCC 330:-

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

- i. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
- ii. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and

overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
iii. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

iv. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

12. The case in hand, when examined on the touchstone of law laid down by the Supreme Court, does not at all persuade this Court to grant the relief prayed for by the petitioner in the instant petition. It is well settled law that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. The Supreme Court in *State of Telangana v. Habib Abdullah Jeelani*, reported in 2017 (2) SCC 779, has held that the powers under Section 482 Cr.PC or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.PC, is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

13. The Supreme Court in *State of Telangana v. Habib Abdullah Jeelani*, reported in *2017 (2) SCC 779*, has held that the powers under Section 482 Cr.PC or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.PC, is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

14. The Supreme Court in the case of *State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335*, has elaborately considered scope and ambit of Section 482 Cr.P.C. and Article 226 of the Constitution of India in the background of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements, the Supreme Court made certain categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102, which gives seven categories of cases where power can be exercised under Section 482 Cr. P.C. are reproduced 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

15. In another case of *State of Andhra Pradesh v. Golconda Linga Swamy, reported in (2004) 6 SCC 522*, the Supreme Court, while

dealing with inherent powers of the High Court under Section 482 Cr.

P.C., has observed and held as under:

“5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers 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 recognizes 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 aliique concedit, conceditur et 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 such 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 exercises of the powers court would be justified to quash any proceeding if it finds that initiation or 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.

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7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the

High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt 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 (1992 Supp (1) SCC 335).....

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8 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. 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 : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghbir Saran v. State of Bihar and another (AIR 1964 SC 1)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the

offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

16. The above settled position of law has also been reiterated by the

Supreme Court in *Priti Saraf & anr v. State of NCT of Delhi & anr*,

2021 SCC Online SC 206, and it has been said that inherent power of

the High Court is an extraordinary power which has to be exercised

with great care and circumspection before embarking to scrutinize a

complaint/FIR/ charge-sheet in deciding whether the case is the rarest

of rare cases, to scuttle the prosecution at its inception. It is settled

that whether the allegations in the complaint were true, is to be

decided on the basis of evidence during the trial. In the matter of

exercise of inherent power by the High Court, the only requirement is

to see whether continuance of the proceedings would be a total abuse

of the process of the Court.

17. In the above backdrop it may be appropriate to mention here that

Section 482 of the Code of Criminal Procedure, preserves the inherent

powers of the High Court to prevent an abuse of the process of any

court or to secure the ends of justice. The provision does not confer

new powers. It only recognises and preserves powers which inhere in

the High Court. The High Court, while forming an opinion whether a

criminal proceeding or complaint or FIR should be quashed in

exercise of its jurisdiction under Section 482 Cr. P.C., must evaluate

whether the ends of justice would justify the exercise of the inherent

power. While inherent power of the High Court has a wide ambit and plenitude, it has to be exercised to secure ends of justice or to prevent an abuse of the process of any court.

18.The instant petition, when looked from all angles, requires and demands full dress trial and examination of facts by this Court as if it is in appeal and acting as an appellate court and to draw its own conclusion vis-à-vis impugned FIR, complaint and proceedings emanating therefrom. This is not the aim and objective of provisions of Section 482 Cr. P.C. more particularly when petition on hand does not unveil any ground muchless cogent or material one, to indicate that the inherent powers are to be exercised to prevent abuse of process of law and to secure ends of justice. In that view of matter, impugned FIR does not call for any interference qua petitioner and as a consequence of which, petition on hand is liable to be dismissed.

19.For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

17.11.2022

“Paramjeet”

Whether the order is reportable: Yes