A.S. Bindra Vs. Senior Superintendent of Police and ors.

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Court : Allahabad

Decided On : Dec-16-1997

Reported in : 1998(2)ALD(Cri)363; 1998CriLJ3845

Judge : Giridhar Malaviya and ;B.K. Sharma, JJ.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 20 and 50; Constitution of India - Articles 21, 141, 226 and 227; Indian Penal Code (IPC) - Sections 420; Code of Criminal Procedure , 1974 - Sections 41, 41(1), 48, 154, 155(2), 156, 156(1), 161, 200, 202, 204, 210, 482 and 561A

Appeal No. : Cri. Misc. Writ Petn. No. 1342 of 1997

Appellant : A.S. Bindra

Respondent : Senior Superintendent of Police and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Ramesh Sinha, Adv.

Judgement :

Giridhar Malaviya, J.

1. I had the advantage of going through the elaborate and detailed Judgment prepared by my learned brother Hon. B. K. Sharma, J. on the preliminary

objection. While Iam in total agreement with him on the points covered by his Judgment and endorse his conclusion I would like to briefly add a lew lines of my own, which are only to summarise the conclusions of Hon. brother B. K. Sharma,. J.

2. The Judgment of seven Judges' Full Bench in the case of Ram Pal Yadav v. State of U.P. (1989 Cri LJ 1013) is clear and cateogorical that unless there is a matter pending before the subordinate Court no application under Section 482, Cr.P.C. can be entertained by the High Court. In other words it means that till the stage of investigation of a Criminal case and thereafter till the filing of the charge sheet and taking cognizance of the offence by the Court, no application can be made in the High Court for quashing the First Information Report or investigation under Section 482, Cr.P.C. However in very exceptional cases the writ jurisdiction of the High Court under Article 226 of the Constitution can be invoked either for quashing the F'irst Information Report or for staying the investigation.

3. In the cases of the Supreme Court which have been delivered after the Judgment of the Full Bench in Ram Lal's case (1989 Cri LJ 1013) (supra), none of the Supreme Court cases considered the question whether jurisdiction of the High Court could be invoked under Section 482, Cr.P.C. while a criminal case was still being investigated. The Supreme Court was, therefore, not deciding this point in any of the subsequent Judgments and any casual observation that either in its jurisdiction under Article 226 of the Constitution of India or under Section 482, Cr.P.C. in a suitable case the High Court could grant relief was just an observation of the Supreme Court to indicate that the High Court could exercise its inherent power under Section 482, Cr.P.C. or extraordinary jurisdiction under Article 226 of the Constitution to interfere in a suitable matter pending investigation. This observation only meant that power under Section 482, Cr.P.C. could be exercised in some proceedings arising out of a complaint etc. when the matter was pending in some Court; and the jurisdiction under Article 226 of the Constitution could be exercised when the matter had till then not reached the Court but was still under investigation by a police officer. The Judgment and observations of the Supreme Court arc not at all contrary to the Judgment of the Full Bench in the case of Ram Lai and it cannot be said that the said observation of the Supreme Court permit

any High Court to exercise its powers under Section 482, Cr.P.C. when the matter is still under investigation. The Supreme Court, as a matter of fact, has quoted Ram Lal's Judgment of the Full Bench of the Allahabad High Court in the case of Janta Dal v. H. S. Chauhan : 1993 CriLJ600 . This paragraph in the aforesaid case has been quoted only to indicate that the similar view which the Supreme Court was taking had already been taken by the High Court in the said Full Bench. As such case of Ram La! has been given a seal of approval by the aforesaid Judgment of the Supreme Court.

4. Thus the conclusion is inevitable that an application under Section 482, Cr.P.C. in the High Court for quashing the First Information Report or the investigation is not maintainable in the High Court unless the charge sheet has been filed and the Court has issued processes on the basis of the charge sheet. Up to that stage only in a suitable case a petition under Article 226 of the Constitution alone can be filed in the High Court. The contrary view taken by the learned single Judges in the cases of (1) Ram Shanker Pandey v. U.P. Police/Station Officer,' P.S. Kotwali, Ghazipur, 1994 J 1C 755 (2) Smt. Jamna v. State of U.P. 1996 JIC 893 : 1996 (33) ACC 699 and (3) unrcported Judgment dated 29-9-1997 by Hon. S. K. Phaujdar, J. in Cri. Misc. Application No. 5811 of 1997. Girja Shankar Srivastava, Branch Manager, Allahabad Distt. Co-operative Bank, Allahabad v. Stale of U.P., do not lay down the correct law and are hereby overruled. The preliminary objection raised by learned Government Advocate is also overruled.

B.K. Sharma, J.

5. This writ petition has been moved by the petitioner for issue of a writ of certiorari quashing the F.I.R. dated 3-6-97 in Crime Case No. 428 of 1997, under Section 420, I.PC, P. S. Kotwali, District Dehradun and also for issue of a mandamus directing respondent No. 2 not to arrest the petitioner in the said case.

6. At the very outset the learned Addl. Govt. Advocate interposed a preliminary objection that this writ petition for quashing of the F.I.R. is not maintainable under Article 226 of the Constitution of India view of the fact that an alternative remedy lies under Section 482, Cr. P.C.

7. In order to properly appreciate the contention of the parties counsel, it is necessary to place on record that in six criminal Misc. Applications under Section 482, Cr.P.C. moved by different persons, out of whom Ram Lal Yadav was one, against State of U.P. and Ors. (Criminal Misc. Application Nos. 5939, 5664, 5940, 5977, 5985 and 6024 of 1988) praying that the F.I.R. and the investigation on its basis be quashed and also praying that the opposite parlies be directed not to arrest the applicants in pursuance of the F.I.R. during the pendency of the applications, the learned single Judge who heard these applications was of the view that the answers given by the Full Bench in the ease of Prashant Gaur v. Siate of U.P. 1988 All Cri C 276 to the questions referred to it with respect of the power of this Court under Section 482, Cr.P.C. to interfere with the. intervention by the police did not appear to be in accordance with the law laid down by the Supreme Court and the Privy Council.

8, The questions referred to the Full Bench in the ease of Prashant Gaur v. Slate of U.P. (1988 All Cri C 276) (supra) and the answers given with respect to them are as follows : QUESTION NO.1.

Whether under Section 482, Cr.P.C. the High Court has inherent powers to interfere with the investigation by the Police?

ANSWER

Investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government. It is only in the rarest of rare cases and that too, when it is found by the Court that the F.I.R. and the investigation over a reasonable length of time. do not disclose the commission of a cognizable offence, or any offence of any kind, that the High Court may, under Section 482 of the Code interfere with the investigation.

QUESTION NO.2

Whether the High Court has powers to stay arrest during investigation? ANSWER

Under Section 482 of the Code, the High Court, may not direct that (he stay of arrest during investigation except for a limited period in case of such exceptional

nature as is referred in the preceding paragraphs.

Whether the decision reported in Puttan Singh v. State of U.P. 1987 All Cri 268 : (1987 All L.I 599) lays down a correct proposition of law?

ANSWER

In view of our answer to question Nos. 1 and 2 question No. 3 does not require to be answered and hence returned unanswered.

9. The learned single Judge in Ram Lal's case had accordingly, referred the undermentioned question for consideration by a larger Bench :

1. Arc the answers to the questions Nos. 1 and 2 given by the Full Bench and the reasons for recording those answers, in accord with the law laid down by the Hon'ble Supreme Court and the Privy Council'.'

2. If the answer to the above question is not in the affirmative, then what is the correct answer to the questions posed before the Full Bench'.'

3. If no answer is thought necessary for any reason to the question No. 2. above, then correct legal position with reference to Pullan Singh's case may be laid down.

These questions were referred to a Full Bench consisting of as many as seven learned Judges of this Court. The Full Bench held;

The High Court has no inherent power under Section 482, Cr.P.C. to interfere with the investigation by the police. The High Court has also no inherent power under Section 482, Cr.P.C. to stay the arrest of an accused during investigation. The decision by the Full Bench in the case of Prashant Gaur v. State of U.P.. 1986 (25) All Cri C 276 (FB) docs not lay down correct law and is overruled.'....'If the first information report does not disclose the commission of an offence the investigation on the basis of such a report is liable to be quashed under Article 226 of the Constitution and not in the exercise of the inherent powers of the High Court under Section 482, Cr.P.C.'....'If the power of investigation is exercised by a police officer mala fide the High Court cannot quash Ihe investigation in the exercise of its inherent power under Section 482, Cr.P.C. but can do so under Article 226 of

the Constitution of India.

The Full Bench indicated some categorical cases where inherent jurisdiction can be exercised for quashing the proceedings and observed..The power of the High Court under Section 482, Cr.P.C. to quash a first information report or a complaint is with reference to proceeding in Court alter the filing of charge-sheet or a complaint and not to investigation prior to the Tiling of the charge-sheet in Court.... The power of the police to arrest a person under Section 41, Cr.P.C. cannot thus be interfered with by this Court in exercise of its inherent power'....'The High Court has no inherent power under Section 482, Cr.P.C. to interfere with the arrest of a person by a police officer even in violation of Section 41(1)(a), Cr.P.C. either when no offence is disclosed in the first information report or when the investigation is mala fide as the inherent powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice came into play only after the charge-sheet has been filed in Court and not during investigation which may even be illegal and unauthorised. If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or mala fide in violation of Section 41(1)(a), Cr.P.C. the High Court can always issue a writ of mandamus under Article 226 of the Constitution restraining the police officer from misusing his legal powers. (Underlined by us).

The Full Bench said :

In the case of Pultan Singh v. State of U.P. (1987 All LJ 599) (supra) it was held;

the first information report lodged by SheoNath Singh discloses the commission of a cognizable offence and also the complicity of the applicant in it. The police thus has statutory power under Section 156, Cr.P.C. to investigate the case registered on the basis of the aforesaid first information report without any interference by this Court in the exercise of its inherent powers.

This Court, therefore, has no jurisdiction to direct a police officer not to arrest the applicant during the pendency of the investigation of the case registered on the basis of the First Information Report lodged by Sheo Nath Singh against the applicant and Ors. which disclosed the commissioin of a cognizable offence in the

exercise of its inherent powers under Section 482, Cr.P.C. ....

In our opinion the case of Puttan Singh v. Slate of U.P. (1987 All LJ 599) (supra) was correctly decided.

(i) For the reasons given above our answer to the first question referred to us is in the negative.

(ii) Out answer to the second question referred to us is that the High Court has no inherent power under Section 482, Cr.P.C. to interfere with the investigation by the police. The High Court has also no inherent power under Section 482, C.P.C. to stay the arrest of an accused during investigation. The decision by the Full Bench in the case of Prashant Gaur v. State of U.P. (1988 All Cri C 276) (supra) does not lay down correct law and is overruled.

(iii) Our answer to the third question referred to us is that the decision in the case of Puttan Singh v. State of U.P. (1987 All LJ 599) (supra) is correct.

This Full Bench Judgment is reported in 1989 All Cri C 181 and in 1989 Cri LJ 1013.

10. In support of his contention, the learned Addl. Govt. Advocate has placed reliance on the views of the three learned single Judges of this Court in; (1) Ram Shankar Pandey v. U.P. Police/Station Officer, P. S. Kotwali, Ghazipur. 1994 JIC 755 (Judgment rendered by Hon. M. Katju, J.) (2) Smt. Jamna v. State of U.P 1996 JIC 893 : 1996 All Cri 699 (Judgment rendered by Hon. G.A. Rahim, J.) and (3) Unreported Judgment dated 29-9-1997 (rendered by Hon. S. K. Phaujdar. J.) in Cri. Misc. Application No. 5811 of 1997, Girja Shanker Srivastava, Branch Manager. Allahabad Disstt. Co-operative Bank. Allahabad v. State of U.P.

11. Learned Addl. Govt. Advocate has also referred to a Judgment of the Apex Court in State of H.P. v. Pirthi Chanel : 1996 CriLJ1354 which was relied upon in the Judgment of the learned single Judge Hon. S. A. Phaujdar, J.

12. Learned counsel for the petitioner has contended that the objection of the learned Addl. Govt. Advocate regarding the maintainability of the present writ

petition on the ground of alternative remedy is not at all sustainable in view of the Judgment of the Full Bench of the High Court comprising of seven learned Judges in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra). His argument was that the said Full Bench considered the objection raised now in the present case by the learned Addl. Government Advocate and held that the High Court has no inherent power under Section 482, Cr.P.C. to interfere with the investigation by the police or to stay the arrest of the accused during the investigation and that, if the F.I.R. does not disclose commission of an offence, the investigation on the basis of such a report is liable to be quashed under Article 226 of Constitution of India and not in the exercise of inherent powers of this Court under Section 482, Cr.P.C.

13. Learned counsel for the petitioner also argued that a similar view has been taken in a Privy Council's decision in Emperor v. Khwaza Nazir Ahmad . In the said decision the Privy Council has held that police has statutory right under Sections 154 and. 156, Cr.P.C. to investigate the offence, that High Court cannot interfere in the exercise of inherent power under Section 561A (now Section 482, Cr.P.C.) and that interference can be made only when the charge is preferred before the Court and not before. It was also argued by learned counsel for the petitioner that in the said authority it was observed that there is a statutory right on the part of police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it woudl be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under Section 561-A old Cr.P.C. (now Section 482, Cr.P.C).

14. It was also argued by learned counsel for the petitioner that the decision of the Privy Council in Emperor v. Khawaza Nazir Ahmad (supra) was followed by the Apex Court in S. N. Sharma v. Bipin Kumar Tiwari : 1970 CriLJ764 , where it was held that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can

always issue a writ of mandamus restraining the police officer from misusing his legal powers.

It was further argued by learned counsel for the petitioner that the view taken by learned single Judge in the three cases mentioned above (Ram Shariker Pandey (1994 JIC 755), Suit. Jamna (1996 JIC 893) and Girja Shankar Srivastava) that if the first information report does not disclose commission of a cognizable offence the High Court can exercise its inherent powers under Section 482, Cr.P.C. is incorrect and is against (he Full Bench decision of this Court in Ram Lal Yadav's case (1989 Cri L.J 1013) (supra).

15. The contentions of learned counsel for the petitioner are three fold : Firstly, that the Full Bench decision of the High Court must be followed by learned single Judges and the learned single Judges cannot disagree or ignore it by treating it to be impliedly overruled and at best learned single Judge can refer the question to a larger Bench for decision, secondly, that the learned single Judges have not considered the Privy Council's decision in Emperor v. Khwaja Nazir Ahmad (supra) and the decision of the Apex Court in S. N. Sharma v. Bipin Kumar Tiwari : 1970 CriLJ764 (supra) wherein the aforesaid controversy on the subject has been decided by the Privy Council and the Apex Court in clear terms; and, thirdly, that in the authorities of the Apex Court relied by the learned single Judges in their aforesaid Judgments this question was never raised, nor decided.

16. We take up the first point first. It has been he'd that in the authority Bhagwan v. Ram Chand : [1965]3SCR218 ..It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that. enquiry siting as a single Judge, but should refer the matter to a Division Bench or in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way

in the present case and chose to examine the question Himself.

17. In the authority Sri V.R.G. & G.O.M.C. Company v. State of Andhra Pradesh : [1972]1SCR346 the Judgment of the Andhra Pradesh High Court was challenged in two appeals and the Apex Court agreed with the reasoning of the High Court in those cases. However, at the hearing of the said appeals the attention of the Apex Court was invited to a latter decision of the same High Court in M. Madar Khan & Co. v. Asstt. Commr. (Commercial Taxes) Anantpur : AIR 1971 AP138 which took a view contrary to that taken in the decision under appeal. In these circumstances the Apex Court observed :.It is strange that a co-ordinate Bench of the same High Court should have tried to sit on Judgment over a decision of another Bench of that Court. It is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision. If they wanted that the earlier decision should be reconsidered, they should have referred the question in issue to a larger bench and not to ignore the earlier decision.

18. Another authority Mattulal v. Radhey Lal : [1975]1SCR127 is also worth-mentioning here. A Bench of four learned Judges of the Apex Court in Sarvate T. B. v. Nemichand 1966 MPLJ 26 decided the matter in question which was raised before the Apex Court in the case Mattulal (supra) and found that there was a latter Judgment of the Apex Court where a different view seems to have been expressed than the view taken in Smt. KamlaSoni v. Rupa Lal Mehra AIR 1969 NSC 186 which was decided by a Bench of three learned Judges and noticing that the observations in Smt. Kami a Soni's case (supra) were plainly in contradiction of what was said by the Apex Court in Servate T. B.'s case (supra), the Apex Court observed that it is obvious that the decision in Sarvate T. B.'s case 1966 MPLJ 26 was not brought to the notice of the Court while deciding Smt. Kamla Soni's case (supra) as the Apex Court would not have landed itself in such patent contradiction and then observed as follows :

That being so, we must prefer to follow the decision in Sarvate T.B.'s case as against the decision in Smt. Kamla Soni's case, as the former is a decision of a larger Bench than the latter..

19. So, this authority has laid down the principle that if there are contradictory decisions of the Apex Court and the former decision is of the larger Bench than the latter, then the former decision should be followed.

20. Therefore, in view of this authority also the learned single Judges were bound to follow the law laid down in the Full Bench authority Ram Lal Yadav (supra).

21. Then there is an authority Union of India v. K. S. Subramanian : (1977)ILLJ5SC . In this authority the proposition laid down was that if there' are contradictory views expressed by different Benches of the Apex Court in the same matter then the High Court should follow the opinions expressed by the larger Bench of the Court in preference to those expressed by smaller Benches. It follows from this that the learned Judge of the High Court is also obliged to follow the view taken by a larger Bench of the High Court.

22. Here it is useful to refer to a Judgment of the Apex Court given by a Bench of five Hon' ble Judges in State of U.P. v. C. L. Agrawal : (1997)IILLJ770SC . In this case the Apex Court in para 19 of its Judgment has observed as follows :

19. We are dismayed that the Division Bench hearing the said writ petition should have proposed to examine the issue 'notwithstanding the aforesaid pronouncement of the Full Bench Judgment....'If the Judgments in the cases of Supreme Court Employees' Welfare Assn : (1989)IILLJ506SC and H. C. Puttaswamy : AIR 1991 SC295 were cited and the respondents to the said writ petition submitted that the Full Bench Judgment was erroneous by reason thereof, the proper course for the Division Bench to follow, if it found any merit in the submission, was to refer the said writ petition to a Full Bench. Judicial discipline requires that a Division Bench should not examine de novo an issue that is concluded by the decision of Full Bench of that High Court.

23. The authority of the Apex Court in the case of State of U.P. v. C. L. Agrawal (1997 All LJ 1371) (supra) is significant in the present case. There also as in the present case the smaller Bench of the High Court had preferred not to follow the Full Bench authority of the same High Court on the view that in the light of two authorities of the Apex Court the Full Bench Judgment of the High Court was

erroneous.

24. In view of the above elear decisions of the Apex Court, it follows that the learned single Judges of this Court were bound to follow the Full Bench authority of Ram Lal Yadav (1989 Cri LJ 1013) (supra) and if any of them felt that in view of the authorities of the Apex Court the Full Bench does not appear to lay down the correct law, the only course open for them was to make a reference of the matter to a larger Bench. It may be added here that even after making such a reference the Full Bench decision of the High Court was to be followed till the decision of the Full Bench was overruled by a larger Bench.

25. Consequently with respect it has to be observed that the aforesaid Judgments of the learned three Judges do not lay down the correct law and cannot be followed in preference to the Full Bench decision in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra) which holds the field to this day.

26. The three learned Judges in their Judgments had relied upon certain authorities of the Apex Court in their single Judgments. The learned single Judges have relied upon Article. 141 of the Constitution of India which says that the law declared by the Apex Court shall be binding within the territory of India. However, in our view, Article 141 of the Constitution of India cannot be invoked as a ground for not following the decision of the High Court rendered by a Full Bench and for by-passing the necessity of making a reference to a larger Bench. We have mentioned earlier that these foresaid authorities of the Apex Court on Law of Precedent would be binding on the learned single Judges and that had to be abided by them for the sake of judicial discipline.

27. We may mention here that one of the learned single Judges (HomM. Katju, J.) in the case Ram Shanker Pandey (1994 JIC 755) (supra) observed in para 17 of his Judgment that the decisions of the larger Bench of the High Court were binding on a smaller Bench of the High Court by the theory of precedent. When the theory of precedent has been sanctioned by the authority of the Apex Court itself, it is difficult to say that a learned single Judge of the High Court need not or should not follow a Full Bench decision of the same Court on the ground that it is contrary to a decision of the Supreme Court. It has been said by learned single Judge in his

Judgment (in Ram Shanker Pandey (supra)) in para 17 that there is no corresponding provision (corresponding to Article 141 of the Constitution of India) in the Constitution making decisions of the High Court binding on smaller Benches of the High Court. However, when the Apex Court itself has said in no uncertain terms in the aforesaid authorities that the decisions of the High Court are binding on the smaller Benches of the High Court. It is immaterial that there is no provision corresponding to Article 141 of the Constitution of India in this regard and only two course are open for the learned single Judges of the High Court either to follow the Full Bench decision or to make a reference to a larger Bench if indeed a case for such a reference to a larger Bench is made out under the circumstances of the case.

28. It may be placed on record that none of the three learned single Judge has made any reference to a larger Bench for reconsideration of the Full Bench authority of Ram Lal Yadav (1989 Cri LJ 1013) (supra) on the ground or supposition of following the law laid down by the Apex Court in some of its decisions on the subject. With respect we have to say that it is unfortunate that the Full Bench authority rendered by as many as seven learned Judges of this Court is not being followed by some of the learned single Judges on the ground or supposition of following the law laid down by the Apex Court in some of its decisions on the subject, though judicial discipline as laid down by the Apex Court itself in a number of decisions, some of which we have quoted in extenso, obliged them to do so. The Courts exist for the sake of upholding the Rule of law and discipline is the life-blood and life force of theRule of law because the alternative of discipline is nothing but anarchy. So, let us not act in such a way as to invite the imputation of judicial anarchy in our judicial pronouncements.

29. We propose now to look the authorities of the Apex Court which have been taken to lay down law contrary to the law declared in the Full Bench decision of Ram Lal Yadav's case (1989 Cri LJ 1013) (supra), but before doing so it will be a useful exercise to place on record some authorities of no less than the Apex Court itself on the question as to what parts of the observations in the Judgments of the Apex Court would be binding precedent.

30. In the case of Rajpur Ruda Meha v. State of Gujarat : 1980 CriLJ1246 (of a Bench consistent of three learned Judges), the ratio was;

As the question... was neither raised nor argued a discussion by Court after pondering over the issue in depth would not be a precedent binding on the Courts.

31. In other words, when certain question is neither raised, nor argued the discussion by the Court even after pondering over the issue in depth would not be binding precedent.

32. In the authority Ambika Quarry Works v. State of Gujarat : [1987]1SCR562 it was observed.

The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and now what logically follows from it.

33. There is yet another authority of the Supreme Court Goodyear India Ltd. v. State of Haryana : [1991]188ITR402(SC) . In this authority it was laid down by the Apex Court that it is well settled that a precedent is an authority only for what it actually decided and not for what may remotely or even locially follows from it.

34. The Full Bench in its Judgment in the case of Ram Lal Yadav (1989 Cri LJ 1013) (supra) had relied on the following authorities of the P.C.. and Apex Court in support of answers given by it to the questions referred :

(1) Hmperor v. Khwaza Nazir Ahmed .

(2.) State of West Bengal v. S. N. Basak : [1963]2SCR52 .

(3) S. N. Sharma v. Bipan Kumar Tewari : 1970 CriLJ764 .

(4) Hazari Lal Gupta v. Rameshwar Prasad : 1972 CriLJ298 .

(5) R.P.Kaoor v. Slate of Punjab : 1960 CriLJ1239 .

(6) Jehan Singh v. Delhi Administration : 1974 CriLJ802 .

(7) Kurukshetra University v. State of Haryana : 1977 CriLJ1900 .

(8) State of Bihar v.I.A.C. Saldanna : AIR 1978 SC326 .

(9) State of West Bengal v. Sampat Lal : 1985 CriLJ516 .

(10) State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 .

35. The Full Bench did not follow the view taken in Vinod Kumar Sethi v. State of Punjab since it was in conflict with the decision of the Privy Council in Emperor v. Khwaja Nazir Ahmad (supra) and of the Supreme Court, in State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 (supra).

36. In the case State of U. P., through CBI SPE, Lucknow v. R. K. Srivastava : 1989 CriLJ2301 the inherent power under Section 482, Cr. P. C. was invoked by the High Court and it had quashed the criminal proceedings pending in the Court of Special Judge Anti-Corruption. This was in consonance with the view taken in Ram Lal Yadav's Full Bench case. The Apex Court observed that the High Court had rightly held that as the criminal proceedings have been started against the respondent on the basis of an F.I.R. which does not contain any definite accusation, it amounted to an abuse of process of the Court and, as such, was liable to be quashed and the Apex Court upheld the Judgment of the High Court and quashedthe entire criminal proceedings aforesaid.

37. In the authority State of Andhra Pradesh v. P. V. Pavithran : 1990 CriLJ1306 the Judgment shows that the High Court of Andhra Pradesh had quashed the first information report in the exercise of its inherent power under Section 482, Cr. P. C. in a case of the file of the Special Judge for ACB and SPC. The ground was related to the investigation of the case, but the material aspect was that it also was a case of a proceeding already pending in the Court. There is absolutely no inconsistency between this authority of the Apex Court and the Full Bench case of RamLal Yadav (1989 Cri LJ 1013) (supra).

38. Then there is an authority State of Haryana v. Ch. Bhajan Lal : 1992 CriLJ527 . In this case the High Court of Punjab and Haryana had quashed the entire criminal proceedings inclusive of the registration of the Information Report on the basis of a

complaint preferred by Mr. Dharam Pal making certain allegations against Ch. Bhajan Lal. The matters which were in issue in Full Bench case of Ram Lal Yadav (1989 Cri LJ 1013) (supra) was not in issue before the Apex Court in Ch. Bhajan Lal's case : 1992 CriLJ527 (supra). It was said in para 84 of the Judgment at page 625 :

84. The nagging question that comes up for examination more often than not is under what circumstances and in what categories of cases, a criminal proceeding can be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitution of India or in the exercise of inherent powers of the High Court under Section 482 of the Code. . .

(Emphasis ours).

39. After it the Apex Court made reference to the authorities of R. P. Kapur v. State of Punjab : 1960 CriLJ1239 (supra), S. N. Basak : [1963]2SCR52 (supra), S. N. Sharma : 1970 CriLJ764 (supra), Hazari Lal Gupta : 1972 CriLJ298 (supra), Jehan Singh : 1974 CriLJ802 (supra), Kurukshetra University : 1977 CriLJ1900 (supra), J.A.C. Saldanna : 1980 CriLJ98 (supra), Swapan Kumar Guha (supra) and R. K. Srivastava (1990 All LJ 62) (supra) and made the following observations in paras 108 and 109 its Judgment :

108. 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 of otherwise the 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 F.I.R. 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 F.I.R. 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 F.I.R. or complaint are so abrund 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.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that 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 F.I.R. or the complaint and that the extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

40. These observations of the Apex Court in this case have been misinterpreted as laying down that both the alternatives (of invoking the extraordinary power under Article. 226 of the Constitution of India and of invoking inherent powers under Section 482, Cr. P. C.) were open to a party for seeking relic)' from the High Court. The true position is that the Apex Court mentioned the illustrative grounds in a composite way, so that the observations may be applied to the cases of the F.I.R. or the complaint (and the proceedings taken in Court in pursuance of charge-sheet or in pursuance of the complaint) as the case may be. The Apex Court did not categorically say anywhere that both the options were open in both trypes of cases i.e. where investigation is pending and where the proceedings are pending in criminal courts.

41. In the authority State of Bihar v. P. P. Sharma : 1991 CriLJ1438 charge-sheet had been submitted in Court and the High Court quashed the proceedings before the Magistrate under Article. 226 of the Constitution of India and the quashing was set aside by the Apex Court. This Judgment also is not inconsistent with the view taken in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra). The question posed before the Full Bench in Ram Lal's case were neither raised before the Apex Court nor were these questions decided.

42. In Janata Dal v. H. S. Chowdhary : 1993 CriLJ600 ; Ram Lal Yadav's case (1989 Cri LJ 1013) (supra) was cited and in para 155 of its Judgment the Apex Court said :

155. The Seven Judges Full Bench of the Allahabad High Court went into the matter very exhaustively in Ram Lal Yadav v. State of U. P. 1989 Cri LJ 1013 and held that 'the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in exercise of its inherent powers under Section 48, Cr. P. C.' This decision has overruled two earlier decisions of that Court in Prashant Gaur v. State of U. P. 1988 All WC 828 (FB) and Puttan Singh v. State of U. P. 1987 All LJ 599.

In fact the Full Bench had affirmed Puttan Singh's case and had overruled only Prashant's case. But the point of i mportance is that the Apex Court did not say that the Full Bench in Ram Lal Yadav's case did not lay down the law correctly. Rather it cut a seal of approval in Ram Lal's case.

43. In the authority of the Apex Court G. L. Didwania v. Income-tax Officer 1995 Supp (2) SCC 724, a complaint was filed and the criminal proceedings were pending before the Magistrate in pursuance thereof and an application under Section 482, Cr. P. C. was moved before the High Court and though the High Court rejected it, the Apex Court quashed those proceedings before the criminal Court under Section 482, Cr. P. C. Thus there was no inconsistency between this authority and the decision in Ram Lal Yadav's case (supra).

44. In Union of India v. B. R. Bajaj : 1994 CriLJ2086 the High Court had quashed the criminal proceedings in pursuance of @ a F.I.R. where the investigation was still in progress and the High Court quashed the investigation under Section 482, Cr. P. C. on the ground that the allegations in the F.I.R. did not make out any offence against the petitioner. When matter came @ in appeal before the Apex Court it referred to the case of Ch. Bhajan Lal : 1992 CriLJ527 (supra) and the illustrative cases given therein and set aside the orders passed by the High Court observing that the High Court had grossly erred in quashing the F.I.R. itself when several aspects of the allegations in the F.I.R. had still to be investigated. In this authority it was said that it was not a fit case for quashing the F.I.R. under Section 482, Cr. PC. but the Apex Court had nowhere considered in this authority as to at what stage the extraordinary jurisdiction under Article. 226 of the Constitution of India could be invoked and at what stage inherent powers under Sec. 482, Cr. P. C. could be invoked and consequently, it cannot be said that this is an authority laying down any proposition of law on the subject, which may be called to be a ratio of the case muchless one laying down a proposition of law at variance with or contrary to the view taken in Ram Lal's case (1989 Cri LJ 1013).

45. In the authority Rupan Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill : 1996 CriLJ381 the facts were that regarding an incident Mrs. Rupan Deol Bajaj lodged an F.I.R. and her husband also lodged a complaint in the Court of Chief Judicial

Magistrate for the same offences and the Magistrate called for a report from the Investigating Officer in accordance with Section 210 of the Cr. P. C. and the police submitted a final report and the Magistrate accepted that final report and at that stage respondent K.P.S. Gill, who was the accused in the F.I.R. and the complaint moved the High Court by filing a petition under Section 482, Cr. P. C. for quashing the F.I.R. and the complaint and the High Court allowed that petition and quashed both the F.I.R. and the complaint. Consequently two appeals were preferred before the Apex Court. These appeals have been disposed of by the Apex Court by the said Judgment. The Apex Court referred to the observations made in the case of Ch. Bhajan Lal : 1992 CriLJ527 (supra) and set aside the impugned Judgment of the High Court and dismissed the petition filed by K. P. S. Gill, the accused in the F.I.R. and the complaint. There is no inconsistency between this authority and the Full Bench Judgment in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra).

46. We may now refer to the authority Slate of H. P. v. Pirthi Chand : 1996 CriLJ1354 . About this authority it may be mentioned at the very out-set that the Judgment of the Apex Court indicated in para 2 itself that charge-sheet was filed against 1st respondent Pirthi Chand under Section 20 N.D.P.S. Act and after considering the charge-sheet the learned Sessions Judge by his order dated 6-7-1987 discharged the respondent from the offence under Section 20 of the said Act and on revision the High Court confirmed the same and so the matter came before the Apex Court by way of criminal appeal. The Apex Court has said in para 3 of its Judgment that the question is whether the learned Sessions Judge was justified at the stage of taking cognizance of the offence, in discharging the accused, even before the trial was conducted on merits, on the ground that the provisions of Section 50 of the said Act had not been complied with and the Apex Court came to the conclusion that the illegality committed did not render the evidence obtained during the investigation inadmissible and that in spite of illegal search the property seized on the basis of the said search still could form basis for further investigation and prosecution against the accused and that the manner in which the contraband is discovered may affect the factum of discovery hut if the factum of discovery is proved then the manner become immaterial. After having given this exposition of law the Apex Court referred to some of the authorities on that subject. The Apex

Court then said in paras 10 to 13 of its Judgment as follows :

10. The question then is whether the High Court would be justified in exercising its inherent power under Section 482 of the Code or under Article 226 of the Constitution to quash the FIR/charge-sheet/complaint.

11. In State of Haryana v. Bhajan Lal : 1992 CriLJ527 (supra) a two-Judge Bench of this Court laid down certain broad tests to exercise the inherent power or extraordinary power of the High Court. It is not necessary to reiterate the guidelines. Suffice it to state that they arc only illustrative. The High Court should sparingly and only in exceptional cases, in other words, in rarest of rare cases and not merely because it would be appealable to the learned Judge, be inclined to exercise the power to quash the FIR/charge-sheet/complaint. In that case the Court held that the FIR should not be quashed since it disclosed prima facie cognizable offences to proceed further in the investigation. In Rupan Deol Bajaj v. Kanwar Pal Singh Gill : 1996 CriLJ381 (supra) this Court reiterated the above view and held that when the complaint or charge-sheet filed disclosed prima facie evidence the Court would not weigh at that stage and find out whether offence could be made out. The order of the High Court exercising the power under Article 226 was accordingly set aside.

12. It is thus settled law thai the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the ease is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the

averments in the charge-sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreck private vengeance process of criminal (laws) is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence, the Court may embark upon the consideration thereof and exercise the power.

13. When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482, the prima consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When Investigating Officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. ...

47. It will be seen that the observations made in para 13 relate to the cases where a charge-sheet has been filed in Court and the accused moves the High Court to invoke inherent powers under Section 482, Cr. P. C. and the earlier paragraphs cover diverse situations as is clear from the use of the phrase FIR/charge-sheet/complaint. The FIR is lodged at the police station, on which investigation follows and if a prima facie case is made out a charge-sheet will be submitted before (the Magistrate and from that stage proceedings become pending in the criminal Court and consequently when the charge-sheet is submitted the machinery of the criminal courts is in motion and then the inherent power under Section 482, Cr. P. C. becomes available. It is a different thing whether a case for invoking inherent power under Section 482, Cr. P. C. is made out or not. A criminal complaint is filed before the Court of the Magistrate and from the stage of filing of the complaint the machinery of the criminal Court is in motion all along. On the filing of the complaint the Magistrate records statements under Section 200, Cr. P.

C. and under Section 202, Cr. P. C. and summons the accused under Section 204, Cr. P. C. if a case is made out for it and in the case of complaint the inherent powers under Section 482, Cr. P. C. could be invoked though again it will depend on the facts and circumstances of each case whether a case is made out for invoking inherent powers under Section 482, Cr. P. C. or not. Before filing of the charge-sheet, at the stage of lodging the F.I.R. or during the investigation (prior to the submission of the charge-sheet) remedy is available only under Article 226 of the Constitution of India.

48. We are unable to see any inconsistency between the view taken in Full Bench case of Ram Lal Yadav (1989 Cri LJ 1013) (supra) and the view taken by the Apex Court in the case of Pirthi Chand : 1996 CriLJ1354 (supra) and the other cases referred to by us in this Judgment.

49. There is yet another authority of the Apex Court State of Bihar v. Rajendra Agrawalla : 1996 CriLJ1372 . It was also a case where proceedings were pending before the criminal Court. An F.I.R. had been lodged and after investigation charge-sheet was filed against respondent and five others and the learned Magistrate on perusal of the papers submitted by the police and the other material took cognizance of the offence in question and it was thereafter that the respondent had filed an application at Patna High Court invoking inherent powers under Section 482, Cr. P. C. for quashing the order of cognizance taken and the High Court having quashed the cognizance taken by the Magistrate, the State preferred its appeal before the Apex Court and the same was disposed of by this Judgment. Thus it was also a case where inherent power under Section 482, Cr. P. C. was applicable since the proceedings were pending before the criminal Court. The Apex Court quoted its observations in Pirthi Chand's case : 1996 CriLJ1354 (supra) and referred to the case of Mrs. Rupan Deol Bajaj : 1996 CriLJ381 (supra) and or. merits the order passed by the High Court invoking its inherent power under Section 482, Cr. P. C. was quashed. Thus, there is nothing in this Judgment which can be said to be inconsistent with the Full Bench decision in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra).

50. In State of U. P. v. O. P. Sharm'a 1996 SCC (Cri) 497 : (1996 All LJ 601), the authorities Pirthi Chandra : 1996 CriLJ1354 (supra) and Rajendra Agrawalla : 1996 CriLJ1372 (supra) had been quoted. In this authority another authority Mushtaq Ahmed v. Mohd. Habibur Rehman Faizi : 1996 CriLJ1877 was also quoted. That appears to be a complaint case. The Apex Court said that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482, Cr. P. C. or under Articles 226 and 227 of the Constitution, as the case may be and allow the law to take its own course and set aside the order passed by the High Court quashing the F.I.R. The observations of the Apex Court indicate that there are spheres in which inherent power under Section 482, Cr. P. C. could be invoked and there are areas where extraordinary jurisdiction under Article 226 of the Constitution of India could be invoked. Nowhere in these authorities anything is said that may show any inconsistency between the decision of the Full Bench in Ram Lal Yadav's case (J989 Cri LJ 1013) and the vice taken by the Apex Court. It will also be seen that in none of those cases there was any such point in issue as was in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra).

51. There is yet another authority of the Apex Court Rashmi Kumar (Smt.) v. Mahesh Kumar : (1997)2SCC397 of the Judgment of the Apex Court in this case shows that a complaint was filed before the Magistrate, who recorded the statement of the complainant under Section 200, Cr. P. C. and took cognizance of the offence and issued process to the respondent and at that stage an application was moved before the High Court requesting that inherent powers under Seclion 482, Cr. P. C. be invoked and the prosecution before the Magistrate may be quashed and the Apex Court referred to the authorities Pirthi Chand : 1996 CriLJ1354 (supra) and O. P. Sharma (1996 All LJ 601) (supra) as also G. L, Didwania (1995 Supp (2) SCC 724) (supra) and on merits the order of the High Court quashing the proceedings under Section 482, Cr. P. C. was set aside,

52. Before we conclude it may be mentioned that the Full Bench decision in the case of Prashant Gaur v. State of U. P. 1988 All Cri C 276 (HCFB) was considered in Ram Lal Yadav's case (1989 Cri LJ 1013) and was overruled. But in the same case of Prashant Gaur after the ren dering of the Judgment by the larger Full

Bench in Ram Lal Yadav's case (1989 Cri LJ 1013) on February 1 1989, a learrted single Judge of this Court (Hon'ble S.I. Jafri, J.) by his Judgment dated 12-10-90, reported in 1991 All Cri C 399 raised an issue whether in view of Pavitran's case : 1990 CriLJ1306 (supra) and R. K. Srivastava's case (1990 All LJ 62) (SC) (supra) the Full Bench decision in Ram Lal Yadav's case is a good law and consequently a request was made to Hon'ble Chief Justice to refer the following three questions to a larger Bench :

(i) whether in view of Pavitran's case : 1990 CriLJ1306 and R. K. Srivastava's case : 1989 CriLJ2301 , the Full Bench decision in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra) is a good law?

(ii) whether the inherent power of the High Court recognised under Section 482 of the Code of Criminal Procedure is a reflection of an inherent constitutional power and would be available to correct the breaches of Article 21 committed by the police during investigation and arrest, and

(iii) whether investigation and arrest on the basis of F.I.R. which discloses no offence would be a violation of Article 21 and not being authorised by Cr. P. C. can be checked Under Section 482, Cr. P. C?

53. Consequent upon this Judgment the Hon'ble the Chief Justice had not constituted any larger Bench. However, that does not make any difference in the legal position in Ram Lal Yadav's case. The Full Bench decision in Ram Lal Yadav's case (1989 Cri LJ 1013) (supra) still holds the field. It may also be mentioned here that the question of constituting a larger Bench arises only when there is a conflict between two authorities' of the High Court of equal strength or where there is a conflict between an authority of this Court and a Judgment of the Apex Court.

54. As observed above, in reality there is no inconsistency between the authorities of the Apex Court and the view taken in Ram Lal Yadav's case (1989 Cri LJ 1013) by the Full Bench of seven learned Judges. So, there was no case for making a reference even now. It may also be mentioned thatRule 6 framed in Chapter V of theRules of the Court empowers Hon'ble Chief Justice to constitute a Bench of two

or more Judges to decide any question of law formulated by a Bench hearing the case. It is a matter of discretion for Hon'ble Chief Justice and ifHon'ble Chief Justice, does not constitute a larger Bench in the light of the Judgment of aforesaid learned single Judge (Hon, S. I. Jafri, J.) there is nothing wrong about it and it cannot be questioned. As noted earlier, there was no need for constituting a larger Bench.

55. It may be useful to refer to the case of State of U.P. v. Deo Dutt Lakhan Lal (Full Bench of five learned Judges of this Court) : AIR1966 All73 . In this authority certain special appeals had been referred to the Bench of five learned Judges by an administrative order of Hon'ble Chief Justice and it was contended that the Bench had no jurisdiction to consider the merit of the administrative order of Hon'ble Chief Justice and it was observed by the Full Bench that it is not open for a Bench to hold that the order of Hon'ble Chief Justice referring the appeals to a Bench was not proper or legal. Ill,view of this, on the same principle, it would follow that if on a reference a larger Bench is not constituted by Hon'ble Chief Justice in the exercise of his discretion the same cannot be questioned.

56. In view of the above discussion, it is obvious that the Full Bench authority Ram Lal Yadav (1989 Cri LJ 1013) (supra) still holds the field. Consequently, the objection of the learned Addl. Govt. Advocate is rejected and it is held in accordance with and following the authority Ram La| Yadav (supra) that the High Court has, no inherent power under Section 482 of the Code of Criminal Procedure to interfere with the investigation by the police and that if the F.I.R. does not disclose commission of an offence the investigation on the basis of the said report is liable to be quashed under Article 226 of the Constitution of India and not in the exercise of inherent powers of the High Court under Section 482 of the Code of Criminal Procedure and the single Judge authorities in Ram Shanker Pandey (1994 JIC 755) (supra), Smt. Jamna (1996 JIC 893) (supra) and Girja Shanker Srivastava (supra) do not lay down good law and are herdby overruled.