

Dr. Monica Kumar and anr. Vs. State of U.P. and ors.

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Court : Supreme Court of India

Decided On : May-27-2008

Reported in : JT2008(7)SC194; 2008(9)SCALE166; (2008)8SCC781; 2008AIRSCW4618; 2008(3)AICLR651

Judge : S.B. Sinha and; Lokeshwar Singh Panta, JJ.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) - Sections 107, 116, 155(2), 156(1), 156(3), 161, 173 and 482; Indian Penal Code (IPC) - Sections 147, 308, 323, 336, 342, 347, 352, 354, 420, 427, 452, 504 and 506; [Constitution of India](#) - Articles 136, 142 and 142(1)

Appeal No. : Criminal Appeal No. 968 of 2008 (Arising out of S.L.P. (Crl.) No. 5593 of 2006)

Appellant : Dr. Monica Kumar and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : A. Sharan, A.S.G., ; C.S. Vaidyanathan, ; P.P. Rao, Sr. Adv

Advocate for Pet/Ap. : Harish N. Salve and; Uday U. Lalit, Sr. Advs.,; K. Pavan Kuma

Disposition : Appeal allowed

Prior history : From the final Judgment and Order dated 24.8.2006 of the High Court of Judicature at Allahabad in Crl. Misc. Application Nos. 7791 and 7792 of 2006

Judgement :

Lokeshwar Singh Panta, J.

1. Leave granted.

2. Challenge in this appeal is to the final judgment and order dated 24.08.2006 passed by the High Court of Judicature at Allahabad whereby and whereunder the High Court has dismissed Criminal Miscellaneous Applications bearing Nos. 7792 of 2006 and 7791 of 2006 filed by the appellants under Section 482 of the Code of Criminal Procedure [for short 'Cr.P.C.'] in Case Crime No. 412 of 2005 under Sections 452, 323, 504, 506 and 427 of the Indian Penal Code [for short 'the IPC'] and in Case Crime No. 21 of 2006 under Sections 452, 323, 336, 504, 506, 420 IPC respectively registered against them at Police Station, Vijay Nagar, District Ghaziabad and seeking for entrustment of further investigation of the aforesaid cases to the Central Bureau of Investigation [for short 'the CBI'].

3. This case would reveal a chequered history of legal battle being fought by the appellants - the students of Santosh Medical College on one hand and the authorities of the College on the other hand.

4. Dr. Narendra Kumar, the father of the appellants, is presently working as Professor/Medical Director of Neonatal Intensive Care Unit [NICU] and also performing medical practice at 2917, Middleboro Place, Modesto, California. Both the appellants were born in California and completed their schooling in USA. They decided to get admission in MBBS course for the academic session 1996-97 in Santosh Medical College, Ghaziabad [for short 'College'] against NRI quota after remitting US \$50,000 and US \$49,700 respectively towards capitation fees and additional hostel fees of Rs. 75,000 and Rs. 45,000 and security deposits for one year. That apart, the College took a loan of Rs. 25 lakhs on interest @ 11.5% p.a. from the father of the appellants and its payment was assured by a handwritten

slip. The disputes and differences arose after the father of the appellants demanded repayment of the loan from Dr. P. Mahalingam - the second respondent herein, Chairman & Managing Director/Trustee of Maharaji Educational Trust and Santosh Medical College and Hospital, Pratap Vihar, Vijay Nagar, Ghaziabad. In April 2001, the matter was reported to the Additional District Magistrate, Ghaziabad, for taking appropriate steps to get the loan amount refunded. Dr. P. Mahalingam - the second respondent in his letter dated 9.4.2001 acknowledged the liability and had also assured to refund the entire loan amount. It was alleged that the second respondent with vindictive attitude started harassing the appellants and in the result declared in July 2000, Dr. Monica Kumar - the first appellant was got failed in both theory papers of Pharmacology and she was not allowed to appear in two subsequent supplementary examinations as well as in Final Professional MBBS Part-I Examination.

5. The first appellant filed a Writ Petition No. 9150 of 2001 in the High Court wherein vide order dated 14.3.2001, the second respondent was directed to permit the first appellant to appear in the final Professional MBBS Part-I Examination. In compliance of the High Court's order, the first appellant was permitted to appear in the examination, but her result was deliberately withheld for an oblique motive which compelled the first appellant to approach the High Court of Allahabad by way of Miscellaneous Application in the pending Writ Petition No. 9150/2001 for issuing necessary directions for declaration of her result. The High Court vide order dated 19.9.2001 directed the College authorities to declare the results of MBBS Final Professional Part-I Examination, 2001 and the result of the scrutiny of Pharmacology of Second Professional Examination, 2000 and further to permit the first appellant to appear in Final MBBS Part-II Examination and to declare the result of the said examination as well. By Orders dated 7.01.2002/16.01.2002, the High Court directed the college authorities to produce answer books of Pharmacology of the first appellant. On 4.03.2002, the High Court got the answer books of the first appellant re-examined by the Head of Department of Pharmacology of Motilal Nehru Medical College, Allahabad in the court itself. On re-examination of the papers, the first appellant secured good marks in both the papers and accordingly, the college authorities were directed to declare her results forthwith. It appears that the orders/directions of the High Court were not complied

with which gave rise to the first appellant to file contempt of court proceedings against the college authorities. The High Court vide order dated 9.4.2002 directed the College authorities to be present personally in the Court but in the meantime on 22.04.2002 the result was declared and for no valid reasons, the first appellant was declared failed in Surgery Practical Examination. The first appellant left with no other remedy, but to approach the High Court by means of another writ petition. The High Court directed the second respondent to produce before it the tabulation chart of Surgery Practical Examination of all the students including the first appellant. The High Court on 12.11.2002 having noticed serious allegations of mala fide, restrained Dr. P. Mahalingam - the second respondent from interfering in and conducting examination of the first appellant and further directed that the practical examination of the first appellant be got conducted through Agra Medical College in which the first appellant was declared pass with 70% marks.

6. The appellants alleged that having miserably failed in all attempts to ruin the career of the first appellant, Dr. Mahalingam - the second respondent on 04.04.2003 got a false and frivolous report lodged under Sections 504 and 506 IPC through his yes-man and associate - Dr. Anil Tomar against all the members of the appellants' family whereupon Case Crime No. 286 of 2003 was registered against them. Both the appellants and their parents filed Writ Petition No. 1923 of 2003 seeking for quashing the said criminal case and the High Court vide order dated 17.4.2003, stayed the arrest of the appellants and their parents during the investigation of the above-said FIR. The Police rushed to file charge sheet without making any fair and effective investigation against which Criminal Miscellaneous Application No. 8542 of 2003 under Section 482 Cr.P.C. was filed by the parents of the appellants in the High Court for quashing the charge sheet and the High Court vide its order stayed further proceedings pending before the trial court.

7. On a complaint made by the father of the appellants and on intervention of the District Magistrate and S.S.P., Ghaziabad, Dr. P. Mahalingam - the second respondent on 28.02.2003 allegedly, gave 5 cheques for Rs. 5 lakhs each against the loan amount and two demand drafts of Rs. 2.5 lacs each on account of payment of the accrued interest. It was stated that one cheque was dishonoured on 18.10.2003 and the father of appellants preferred a Criminal Case No. 7272 of

2003 against Dr. Mahalingam - the second respondent under Section 138 of the Negotiable Instruments Act in the Court of Additional Chief Judicial Magistrate, Ghaziabad wherein by order dated 24.1.2004 the second respondent and others were summoned as accused persons. On filing of the above criminal case by the father of the appellants, the second respondent got infuriated and became more and more vindictive against the appellants and their family members.

8. The appellants then stated that the tape recorded conversation held between the father of the appellants and Dr. M.K. Shrivastava, Principal of the College, would clearly reveal that Dr. P. Mahalingam - the second respondent is the main person instrumental in victimisation and harassing of the appellants. On 2.5.2004 and 2.6.2004 the appellants were allegedly assaulted mercilessly by the second respondent, Anil Somania, Station Officer, P.S. Vijay Nagar and their drivers. The first appellant was molested and she had been threatened to be kidnapped, raped and even murdered whereas the Dr. Manish Kumar- the second appellant, brother of the first appellant was assaulted with kicks, fists, shoes and sticks. They got themselves medically examined at the Government M.M.G. Hospital, Ghaziabad and on refusal to register their FIR by the Police of Police Station, Ghaziabad, the appellants proceeded to file an application under Section 156(3) Cr.P.C. before Chief Judicial Magistrate, Ghaziabad seeking direction to the police to register the FIR and hold proper investigation in the case. Though the said application was initially rejected by the Chief Judicial Magistrate, but in view of the order of the IIIrd Additional District and Sessions Judge, Ghaziabad, the Chief Judicial Magistrate by order dated 3.10.2005 directed the concerned Police Station Officer to register the case against the culprits.

9. Aggrieved thereby, Dr. P. Mahalingam - the second respondent filed a Criminal Writ Petition before the High Court which was dismissed vide order dated 9.11.2005. In pursuance of the order of the Chief Judicial Magistrate dated 03.10.2005 and subsequent order of the High Court dated 9.11.2005, FIR at the instance of Dr. Monica bearing Crime No. 425 of 2005 was registered on 28.11.2005 under Sections 147/323/342/352/354/427/504 and 506 IPC at the Police Station against Dr. P. Mahalingam and other persons named in the complaint.

10. The appellants stated that as citizens of the United States of America, they sent a representation to the President of USA whereupon White House responded and sent a letter dated August 16th 2004 informing the appellants that White House had decided to send the petition to the Department of State to address the grievances of the appellants. Further, by letter dated August 30, 2004 the appellants were also informed about the steps having been taken by the USA.

11. The appellants also stated that even on issuance of satisfactory completion certificate of internship to the first appellant duly signed by all the Professors and Heads of Departments, Medical Officers and Dean of Faculty on 18/19.3.2004, the Principal of the College who was simply required to countersign internship completion certificate, deliberately for no valid reason entered the word 'unsatisfactory' by antedating it as 16.01.2004 at the behest of Dr. P. Mahalingam - the second respondent as a result thereof the first appellant could not get the MBBS Degree for getting herself enrolled with Medical Council of India nor she could appear in any Post Graduation Examination. Aggrieved by the action of the Principal of the College, the first appellant preferred Civil Writ Petition No. 19069 of 2004 in the High Court of Allahabad and the High Court vide its order dated 11.01.2005, recorded that the certificate issued by the competent authorities was deliberately antedated. The learned single Judge of the High Court by order dated 17.2.2005 disposed of the said writ petition as counsel for Dr. P. Mahalingam - the second respondent produced a fresh certificate reporting therein that the first appellant had completed her internship satisfactorily and therefore was eligible for MBBS Degree. The first appellant being aggrieved against the order by which other reliefs prayed for in the writ petition were declined, filed a Special Appeal in the High Court which was allowed on 31.3.2005, directing the authorities concerned to issue other required certificates, i.e. character certificate, pass certificate and attempt certificate to the first appellant.

12. In compliance to the order of the High Court Dr. P. Mahalingam - the second respondent issued character certificate, pass certificate and attempt certificate to the first appellant but with wrong dates and incomplete particulars. The first appellant again was forced to file Contempt Petition No. 4057 of 2005 against the second respondent praying for taking legal proceedings against him for violation of

the court's order. The High Court on 23.12.2005 recorded the following order:

This Court without going into the controversy is not issuing any notice on the contempt application at this stage and disposes of this application with a direction to the opposite party to consider the request made by the applicant in her representation within three weeks from the date of the production of a certified copy of this order. If the grievance of the applicant is found to be genuine, in that event, fresh certificates shall be issued immediately.

13. The appellants stated that Dr. P. Mahalingam - the second respondent found a good ally in Anil Somania the then Station Officer of P.S. Vijay Nagar whose daughter was also studying in the same College and thus was able to intensify the harassment of the appellants and got initiated criminal proceedings against them under Sections 107/116 Cr.P.C. This time again on being approached by the appellants, the High Court by order dated 25.11.2005 stayed those proceedings.

14. Having failed in all earlier attempts to harm the careers of the appellants, the second respondent allegedly in collusion with Anil Somani, SHO, instigated Dr. I.M. Sharma, Warden of Girls Hostel of the College the third respondent herein and got a false and frivolous FIR No. 297/2005 (Case Crime No. 412/2005) dated 5.10.2005 registered against the appellants under Section 452/323/504 and 506 IPC at P.S. Vijay Nagar. The appellants filed Criminal Miscellaneous Petition No. 11192 of 2005 in the High Court and the High Court on 7.11.2005 passed the following order:

Having regard to the facts and circumstances of the case, the arrest of the petitioners for the offences indicate above is stayed till the submission of the report on the following conditions:

1. That the petitioners will not be arrested in respect of the said crime number during the pendency of the investigation provided they cooperate with the investigation.
2. The stay of arrest will operate only if certified copy of this order along with one self attested copy of the writ petition is served upon the investigation officer within

fifteen days from today.

3. The stay of arrest will cease to operate if it is decided to submit a charge sheet after investigation.

4. Because the complainant has not been heard at this stage, therefore, it will be open to the complainant or the investigation officer who has not been given opportunity to file counter affidavit or any other party aggrieved to apply in this writ petition for recall/modification of this order, if any misstatement is found in the material facts stated in the writ petition or other legally valid ground which may be available to the party so applying.

5. The investigating officer will make all possible efforts to conclude the investigation within three months of the date on which a certified copy of this order is served upon him. The SSP Ghaziabad is directed to hand over investigation of this case to a Gazetted Officer not below to the rank of Deputy Superintendent of Police.

15. Leaving no stone unturned to fulfill his vengeance and revengeful attitude against the appellants, the second respondent got one more frivolous FIR bearing Crime No. 21 of 2006 dated 14.1.2006 registered against them under Sections 452/323/336/504/506 and 427 IPC at P.S. Vijay Nagar at the behest of Rajendra Kuntal - Head Security Guard of Dr. P. Mahalingam. The complaint of Rajendra Kuntal was sent through Ram Murti Mani Kandan, Personal Manager of the second respondent, to the Police Station. The appellants were arrested on 15.01.2006 from their house and lodged in jail. They were released on bail by the learned Sessions Judge on 31.01.2006.

16. Owing to constant threats and victimisation by Dr. P. Mahalingam in collusion with the local police, the appellants filed Miscellaneous Writ Petition No. 1947 of 2006 praying for CBI investigation into the matter. On 22.07.2006, the High Court passed the following order:

Considering the facts and circumstances of the case, we are of the view that the correct position of the investigation of the cases be also brought on record.

Therefore, learned AGA is directed to file counter affidavit annexing the copies of the statement of the prosecution witnesses recorded under Section 161 Cr.P.C. in the cases referred to above. The case be listed on 27.3.2006.

The Senior Superintendent of Police, Ghaziabad shall look into the grievances of the petitioners regarding the ill- treatment/humiliation/harassment etc. by the local police and the respondents/accused concerned and ensure adequate security to them and their family members in all respects and submit the compliance report on or before 10th March, 2006.

Let a copy of this order be furnished to the learned AGA free of cost by tomorrow for intimating the authority concerned.

17. The appellants alleged that Sub-Inspector J.K. Gangwar ought not to have conducted the investigation of the cases, as in the earlier proceedings, the High Court made observations that he was under the influence of SHO Anil Somani. S.I. Gangwar without proper and fair investigation hurriedly prepared and filed charge sheet in the trial court on the basis of which the learned Chief Judicial Magistrate proceeded to take cognizance of the offences against the appellants.

18. The appellants then preferred two separate petitions referred to above under Section 482 Cr.P.C. for quashing of the said FIRs and entrusting further investigation of the cases to CBI. The High Court by impugned order dated 24.08.2006 dismissed the petition. Hence, the appellants are before us in this joint appeal by way of special leave.

19. We have heard the learned Counsel for the parties and meticulously examined the entire material on record.

20. Shri Harish N. Salve, learned senior counsel appearing for the appellants, assailed the judgment of the High Court inter alia contending that the First Information Reports and further proceedings initiated thereto by the trial court against the appellants are vitiated on the following grounds:

(i) that the allegations made in the FIRs and evidence collected during investigation on their face are so absurd and inherently improbable that no prudent

person can ever arrive at a conclusion that there are sufficient grounds for proceeding against the appellants-students of MBBS course for the commission of the alleged offences registered at the instance of the employees of the College;

(ii) that the appellants' case is fully covered by the principles laid down by this Court in the case of *State of Haryana v. Bhajanlal* (1995) Suppl. SCC 335 and the High Court has misapplied the ratio of the said case in the facts of the present case;

(iii) that the High Court has failed to appreciate that there was an apparent nexus between Dr. P. Mahalingam -the second respondent and two informers, who in collusion with the local police, have launched two false and vexatious criminal cases against the appellants in continuation of series of acts of victimization and harassment first to spoil their future career;

(iv) the High Court has failed to appreciate that the material on record leaves no room of doubt that the Criminal Cases were initiated at the instance of Dr. P. Mahalingam - the second respondent due to mala fide intention, vengeance and animosity in continuation of his designs to misappropriate the loan amount advanced to him by the father of the appellant for establishment of the College;

(v) that the High Court has failed to appreciate that Dr. P. Mahalingam who happens to be the Chairman and Sole Trustee of the Maharaj Ji Educational Trust which is running the Santosh Medical College for imparting medical education at the Under Graduate Level, which is one of the noblest professional qualification that one can impart on human beings, has been indulging in acts of omissions and commissions which are wholly unexpected of him. After having failed in all his repeated attempts to spoil the career of the appellants, the second respondent adopted a vindictive attitude towards the appellants and the facts of the present case clearly establish that the allegations made in the complaints are not only false but are the result of mala fides of Dr. P. Mahalingam.

21. In opposition, Mr. Amarendra Sharan, learned Additional Solicitor General appearing on behalf of CBI - the fourth respondent, urged before us that acceptability of mala fides against second respondent is a matter of trial and that it

is not a case where charge sheet prima facie does not disclose commission of offences and that the defence pleaded by the appellants, is in fact, has to be considered by the courts below during the trial of the cases pending against them.

22. Shri Shail Kumar Dwivedi, learned Counsel appearing on behalf of the State of U.P., supported the contention of the learned Counsel for CBI and submitted that since the investigation of the cases having been completed, charge sheets filed and charges framed by the trial court against the appellants, therefore, now the trial is completely in the domain of the trial court and certainly it is not a proper stage of quashing the FIRs and charge sheets filed under Section 173 Cr.P.C. In support, reliance is placed on *Som Mittal v. Government of Karnataka* : 2008 CriLJ1610 ; *State of H.P. v. Prithi Chand* : 1996 CriLJ1354 and *State of Orissa and Anr. v. Saroj Kumar Sahoo* : (2005)13SCC540 to contend that the inherent power of the High Court for quashing criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the present case does not fall in that category.

23. Shri K.K. Venugopal, learned senior counsel appearing on behalf of Dr. P. Mahalingam - the second respondent, vehemently contended that the appellants have concocted contradictory stories in different proceedings regarding their alleged harassment by the College authorities inasmuch as they initially took the plea that they were allegedly being harassed by Dr. M.K. Srivastava - Principal of the College because he wanted the second appellant to marry his daughter but in subsequent proceedings the appellants changed their earlier stand and took up another false plea that they were being harassed at the behest of the second respondent from whom their father demanded the return of loan amount of Rs. 25 lakhs. He submitted that it was proved on record that loan amount of Rs. 25 lakhs has already been paid to the father of the appellants by way of cheques and bank drafts way back in the year 2003 itself. Mr. Venugopal has brought to our notice the relevant paragraphs of counter affidavit filed by the second respondent in opposition to the present appeal in which the allegations of the appellants that they were intentionally got failed in the examinations at the instance of the second respondent has been categorically denied. The second respondent stated that the first appellant had failed repeatedly due to her poor performance in the

examination and definitely not due to any amount of harassment or acts of victimization by him as alleged by the first appellant, whereas the second appellant could successfully complete his MBBS Course and, accordingly, all certificates like Internship Certificate, Passing Certificate and Character Certificate were issued to him on successful completion of the course. He submitted that the record of the College would reveal that despite a series of complaints regarding the act of indiscipline of the first appellant, he always took a lenient view so that she should not suffer in her studies and he has always extended full support to every student including the first appellant. He submitted that the FIRs were registered against the appellants by the employees of the College in their personal capacity for the commission of the alleged offences by them and their allegations that the said cases were registered at his behest, are absolutely false, baseless and unfounded. He then submitted that the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. has found prima facie case against the appellants and recorded well-reasoned order which is based upon proper appreciation of the settled proposition of law, this Court, therefore, shall restrain itself from interfering with the impugned order of the High Court in exercise of jurisdiction under Article 136 of the [Constitution of India](#).

24. Shri P.P. Rao, learned senior counsel appearing for Dr. M.K. Shrivastava - Principal of the College and Dr. I.M. Sharma - Warden of Girls Hostel (an informant of Case Crime No. 412 of 2005), contended that not only the police found prima facie case but the court below also found sufficient material against the appellants on the basis of which cognizance of the offences alleged against them in Case Crime No. 412 of 2005 was taken and the trial court now has framed charges against the appellants. He next contended that the mere fact that senior police officer's daughter was a student of the respondent-College by itself would not lead to the conclusion that investigation of the cases registered against the appellants was tainted or not being conducted properly and fairly by the Investigation Officer. He supported the order of the High Court which, according to him, is valid and legal both on facts and law.

25. Having heard the learned Counsel for the parties and having noticed and considered the proposition of law laid down by this Court in a number of decisions,

the learned Single Judge of the High Court observed:

The contents of the report registered as Case Crime No. 412 of 2005 under Sections, 452, 323, 504, 506, 427 IPC at Police Station Vijay Nagar, Ghaziabad, transpires that on 5.10.2005 at about 6 p.m. Dr. Monica Kumar and Dr. Manish Kumar entered in the house of Dr. Indra Mohini Sharma, H. No. 14, Sector-12, Pratap Vihar, Ghaziabad with knife and brick bats. They started hurling abuses to her saying that she is much close to Dr. P. Mahalingam. She was also slapped and was also threatened that her children would be kidnapped and killed. On her cries, security men namely, Rajveer, Prempal and some of the students of the College, came for her rescue. Some of the household goods were also damaged by them. The victim (Dr. Indra Mohini Sharma) who is teacher in Santosh Medical College under Section 161 of the Code supported the F.I.R. version and mentioned that both the accused threatened and slapped her. She was rescued by the security men Rajveer and Prem Pal. Police also recorded statement of these two security men also of Gaurav Pandey, student of the College who reiterated about the incident. For the other incident dated 14.1.2006 report was lodged as Case Crime No. 21 of 2006 under Sections 452, 323, 336, 504, 506, 420 IPC at Police Station Vijay Nagar, Ghaziabad, against Dr. Monica Kumar and Dr. Manish Kumar as they are said to have beaten the security man Rajendra Kuntal and also damaged the College properties. The investigating officer has recorded the statement of Rajendra Kuntal and other security personnel namely Prempal and Manoj Kumar. Both the witnesses have supported the FIR version.

It may be mentioned that in exercise of the proceedings under Section 482 of the Code, this Court has to prima facie ascertain about the existence of the sufficient ground for proceeding against the accused. For limited purpose the court can evaluate the material and documents on record but it cannot appreciate the evidence so as to access the credibility of the statement of the witnesses recorded in the course of investigation. Further it is not required to appreciate the evidence to find out whether the materials produced are sufficient or not for convicting the accused. In the case of Chand Dhawan v. Jawahar Lal : 1992 CriLJ1956 it was observed by the Apex Court that when the material relied upon by a party are required to be proved, no inference can be drawn on the basis of materials to

conclude the FIR/complaint version to be unacceptable. The scope of exercise of the power under Section 482 of the Code and categories of the cases where High Court may exercise its power under it relating to cognizable offences to prevent the abuse of the process of court or otherwise to secure the ends of justice were set in detail by the Apex Court in the case of [State of Haryana v. Ch. Bhajan Lal : 1992 CriLJ527] they have been enumerated as under:

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Here allegations made in the report and the evidence so collected in the course of investigation construe a cognizable offence, it would not fall in any category of the case enumerated above, call for the exercise of extra ordinary powers or inherent power quashing the charge sheet submitted in the above-noted cases.

26. The special leave petition came up before this Court on 20.11.2006 on which date it was ordered:

Issue notice. On an oral prayer made by the learned Counsel, issue notice to Union of India confined to the question as to whether the investigation be done by the C.B.I. in the event the Court finds it necessary to do so.

The Court below may frame charges wherefor the petitioners shall make them available on the next date fixed. Thereafter, further proceedings shall remain stayed.

Four weeks' time is granted for filing counter affidavit. Two weeks' time, thereafter, is granted for filing rejoinder.

27. The parties have exchanged their counter affidavits and rejoinders. Indisputably, there is no quarrel with the well- settled principles of law that while exercising powers under Section 482 Cr.P.C., the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which courts exist. When the 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 allegation are accepted in toto.

28. In *R.P. Kapur v. State of Punjab* : 1960 CriLJ1239 , this Court summarises some categories of cases in which inherent power can and should be exercised to quash the proceedings:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) Where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

29. The scope of exercise of power under Section 482 Cr.P.C. 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 which has been dealt with by the High Court in *State of Haryana v. Bhajan Lal* : 1992 CriLJ527 . In the said case, a note of caution to the effect was, however, added that the power should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The illustrative categories indicated by this Court are earlier extracted in the order of the High Court.

30. We may reiterate and emphasise that the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its jurisdiction of quashing the proceeding at any stage. [See *Janata Dal v. H.S. Chowdhury* : 1993

CriLJ600 ; Raghubir Saran Dr. v. State of Bihar : 1964 CriLJ1 ; Kurukshetra University v. State of Haryana : 1977 CriLJ1900 ; and Zhandu Pharmaceuticals Works Limited and Ors. v. Mohd. Sharaful Haque and Anr. : 2005 CriLJ92].

31. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings. [See State of Maharashtra v. Ishwar Piraji Kalpatri : 1996 CriLJ1127 ; Zhandu Pharmaceuticals Works Limited and Ors. v. Mohd. Sharaful Haque and Anr. : 2005 CriLJ92 ; State of Bihar and Anr. v. J.A.C. Saldanah : 1980 CriLJ98 ; State of Orissa v. Saroj Kumar Sahoo : (2005)13SCC540]. There may be some exceptions to the said rule but we are not concerned with such a case.

32. This Court in the latest decision has held that where investigation was completed, charge sheet had been filed and charges are framed, the High Court should not ordinarily embark upon an enquiry as to the reliability of offences to sustain the allegations made in the complaint which is the function of the trial court. [see Som Mittal v. Government of Karnataka (2008) 2 SCC 753]

33. Having given our careful consideration to the submissions made by the learned Counsel for the parties and in the backdrop of the facts and in the light of principles of law highlighted above, we have examined the entire material placed on record by the parties in the case on hand. Indisputably, both the appellants took admission in the MBBS course in the session 1996-97 in Santosh Medical College and Hospital under the NRI quota against handsome payments of US \$50,000 and US\$49,700 each in addition to hostel charges and security deposit, i.e. Rs. 75,000/- and Rs. 45,000/- respectively for one year. In April 2000, Dr. P.

Mahalingam - the second respondent, Chairman/Managing Director of the Medical College took a loan of Rs. 25 lakhs on interest at the rate of 11.5 % from Dr. Narendra Kumar, father of the appellants. As noticed in the earlier part of this judgment, a series of civil writ petitions and criminal proceedings besides contempt proceedings were initiated by the appellants in which allegations of mala fides, acts of victimization and physical and mental harassment were alleged against the second respondent in his personal capacity and also as a Chairman/Managing Director of the College Trust. The appellants filed application under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate on the basis of which case under Section 347/502/506/342/352/ 354 and 427 IPC has been registered against the defaulters. The second respondent is said to have challenged the order of the Magistrate but he could not succeed. The appellants are facing trial of Case Crime No. 412/2005 lodged against them by Dr. Indra Mohini Sharma, third respondent, under Sections 458/323/504/506 IPC and Case Crime No. 21/2006 registered on 14.01.2006 in Police Station Vijay Nagar at the behest of Rajender Kuntal-respondent, Security Guard of the institution, under Sections 452/323/336/504/506 and 427 IPC. The above-stated cases pertained to the period when the appellants were students and studying MBBS Course in the College. The trial of the said cases at present is at initial stage and further proceedings thereof are stayed by this Court. The record would reveal that during the investigation of Case Crime No. 412/2005 for offences punishable under Sections 453, 323, 504, 506 IPC, the appellants were arrested by the police on 15.01.2006 from their house and were lodged in jail. Their bail applications were adjourned four times by the learned Magistrate, who had called for case diary and medical reports, which the prosecution did not produce. It was only on the adjourned date, i.e. 18.01.2006 when written medical report of doctor from Batra Hospital, New Delhi, was filed before the learned Magistrate reporting some injuries have received by complainant Rajender Kuntal and on the basis of the said medical report, Section 308 IPC came to be added in the said Crime Case. The learned Magistrate rejected the bail application of the second appellant in that case. The second appellant filed a bail application before the learned Sessions Judge on 21.01.2006 which was adjourned to 31.01.2006 on that date the second appellant could be released on bail. The first respondent-State of U.P. has filed with their affidavit

translated true copies of apology letters dated 13.04.2004 and 02.05.2004 respectively said to have been written by the appellants and addressed to the SHO, Vijay Nagar P.S., Ghaziabad, the contents whereof read as under:

Tomorrow morning 9am, myself and my daughter Monica Kumar and Manish Kumar will go to SP City office. So we won't go to the Mess of Santosh Medica College and we won't abuse any employee. We apologize for the quarrel happened today evening in the Mess with Mr. Krishanmoorthy.

Sd/-

Monica Kumar

Sd/-

Manish Kumar

Sd/-

Savitri

K-8 Sector 12,

Pratap Vihar

Dt. 13.04.04

Sd/-

G. Krishnamoorthy

Drt. 13.04.04

Sd/-

R. Manikandan

Dt. 13.04.04

SO, Vijay Nagar Police Station,

Ghaziabad.

Ref.

From today onwards we won't stand in front of the police car. Neither open our lights.

I am sorry for misconduct today.

Sd/-

Monica Kumar

Dt. 2-5-2004

Sd/-

Manish Kumar

Dt. 2-5-2004

34. The entire details of the facts of the present case do indicate that the appellants during their study of MBBS Course had some problems with the second respondent; some staff of the College and the then SHO of P.S. Vijay Nagar, whose daughter was also studying in the same College. The record would reveal that both the appellants being NRI candidates have undergone physical and mental agony and torture during their students' career in pursuing the MBBS course. They had spent most of their precious time in litigation in the courts fighting for their genuine and legitimate claims. They may be lacking in some indiscipline activities in the College for which they have been facing criminal proceedings for the past about 3 years. Looking to the entire backdrop of the peculiar facts of countless incidents having faced by the appellants during their primary life as MBBS students and the nature of the offences alleged against them in the above mentioned crime cases lodged by Mrs. Indra Mohini Sharma and Rajender Kuntal in Police Station Vijay Nagar, Ghaziabad and allegations and

counter allegations in various complaints made by the parties against each other and coupled with the tenor and contents of the apology tendered by the appellants, we are of the view that it is a fit case where we should exercise our jurisdiction under Article 142 of the [Constitution of India](#). We are conscious of the well- settled law laid down by this Court in the above referred decisions and many more that in case of persons against whom prima facie case is made out and charge sheet is filed in the competent court, it is that court which will then deal with the case on merits in accordance with law and the High Court should not except in extraordinary circumstances exercise its jurisdiction under Section 482 Cr.P.C. so as to quash the prosecution proceedings after they have been lodged.

35. Under Article 142 of the Constitution this Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. Though there is no provision like Section 482 of the Criminal Procedure Code conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court. If the court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. Once this Court is satisfied that the criminal proceedings amount to abuse of process of court, it would quash such proceedings to ensure justice. This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. What would be the need of complete justice in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a

cause or matter before it, it has power to issue any order or direction to do 'complete justice' in the matter.

36. While considering the nature and ambit of its own power under this Article, this Court observed that it was advisable to leave its power undefined and uncatalogued so that it remains elastic enough to be molded to suit the given situation; even where no alternative remedy is efficacious due to lapse of time. [see Delhi Development Authority v. Skipper Construction Co. (P) Ltd. : AIR 1996 SC2005 relying on Re: Vinay Chandra Mishra : 1995 CriLJ3994 and Kerala State Electricity Board v. Kurien E. Kalathil : AIR 2000 SC2573 . The power to do complete justice under this Article is, in a way, corrective power, which gives preference to equity over law. It is a residuary power, supplementary and complementary to the powers specially conferred by the statutes to do complete justice between the parties whenever it is just and equitable to do so. It is intended to prevent any obstruction to the stream of justice.

(emphasis supplied)

37. In this view of the matter, in order to do complete justice to the parties in the backdrop of the peculiar facts of this case and other circumstances noticed hereinbefore and also taking into consideration the future career of the appellants who by this time might have joined the noble medical profession and owing to the reasons and observations above stated, this appeal is allowed as a result thereof the order of the High Court impugned in this appeal is set aside subject to the directions contained herein.

38. Mr. K. K. Venugopal and Mr. P. P. Rao at one stage of the hearing very fairly suggested that keeping in view the relationship of a teacher and taught and having regard to the peculiar facts and circumstances of the case, the concerned respondents would be satisfied if an apology is tendered and some amount of compensation is awarded in favour of the third respondents-informants of Crime No. 412 of 2005 and of Crime No. 21 of 2006.

39. We, having regard to the peculiar facts and circumstances of this case, are of the opinion that it is a fit case where we should exercise our discretionary

jurisdiction under Article 142 of the [Constitution of India](#) so as to bring the dispute between the parties to an end. We, however, are of the opinion that as the appellants, at the relevant time, were students, no amount of compensation be directed to be paid. They must, however, file a written apology in the courts where the proceedings are pending.

40. Consequently, criminal proceedings arising out of Case Crime No. 412/2005 registered at the behest of Dr. Indra Mohini Sharma under Sections 452, 323, 504, 506 and 427 IPC and proceedings of Case Crime No. 21/2006 under Sections 452, 323, 336, 504, 506 and 427 IPC filed by Rajender Kuntal at Police Station Vijay Nagar, Ghaziabad and charges said to have been framed by the trial court based upon the above-said criminal cases against the appellants shall also stand quashed.

41. Before parting with this judgment, we make it clear that any observations made by us in this judgment may not be construed as an expression of opinion on the genuineness, authenticity, validity and legality of the allegations and counter allegations levelled by the parties against each other in different proceedings and we have closed the proceedings of the above-mentioned FIRs initiated against the appellants mainly in exercise of our jurisdiction under Article 142 of the Constitution.

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