

Govind and ors. Vs. the State (Govt. of Nct of Delhi)

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Court : Delhi

Decided On : Apr-07-2003

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Judge : Dalveer Bhandari and; H.R. Malhotra, JJ.

Acts : Indian Penal Code (IPC) - Sections 120, 294, 323, 384, 406, 498A and 506; Code of Criminal Procedure (CrPC) - Sections 155(2), 156(1), 320(9) and 482; [Constitution of India](#) - Articles 32 and 226

Appeal No. : Criminal Writ Petition Nos. 758, 917 and 1295/2002

Appellant : Govind and ors.;renu Dhawan;chinnu Bhai Chiman Lal Dalal and anr.

Respondent : The State (Govt. of Nct of Delhi);The State (Nct of Delhi) and anr.;central Bureau of Investigation

Advocate for Def. : Akshay Bipin, Adv. in Criminal Writ Petition No. 1295/2002, ; Akshay Bipin, Adv. and ;

Advocate for Pet/Ap. : Rambir Singh, Adv. in Criminal Writ Petition No. 1295/2002,; Rajiv Nayar, Sr. Adv.,;

Judgement :

Dalveer Bhandari, J.

1. By this judgment we propose to finally dispose of Criminal Writ Petition Nos.1295 of 2002, 758 of 2002 and 917 of 2002. Although Criminal Writ Petition No. 1295 of 2002 was disposed of by us on 12th November,2002, but we propose to give detailed reasons for the disposal of the said writ petition and other petitions by this judgment.

2. The facts of only Criminal Writ Petition No. 1295 of 2002 are briefly recapitulated as under:-

A joint petition by the complainant and the accused husband has been filed for quashing of FIR No. 498A, 406/34 IPC registered at Police Station Uttam Nagar. It is stated that on account of trivial matrimonial disputes said FIR was registered on 16.8.2002. The parties even filed a petition for the grant of divorce. During the pendency of the petition by the intervention of relations and friends, the complainant and her husband accused have resolved their disputes and differences and now they are living together happily. It is stated that the prosecution has not yet filed the challan. It is mentioned that the trial and prosecution would be sheer wastage of precious time of the Court and public funds and in the absence of any support from the complainant the prosecution cannot succeed and the trial in this case will prove to be an exercise in futility. therefore, in the interest of justice, the FIR be quashed. We would not like to burden this judgment with the facts of the other cases. Those cases are also being disposed of by separate orders on the principles laid down in this case.

3. In these petitions, the common question of law which arises for determination is with regard to extent and ambit of inherent powers of the High Court under Section 482 of the Code of Criminal Procedure and powers of the High Court in exercise of jurisdiction under Articles 226 of the [Constitution of India](#).

4. We propose to examine the questions of law as has been crystalised by a large number of cases of the Apex Court and other Courts. In the first part of the judgment, we propose to deal with the cases where the scope and ambit of powers under Section 482 of Criminal Procedure Code has been examined by the Apex Court and other Courts. In the second part of the judgment, we propose to deal with the scope and ambit of powers of the High Court while exercising its

jurisdiction under Articles 226 of the Constitution.

PART-1

POWERS UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE

5. Section 482 of the Code of Criminal Procedure deals with the most valuable and important powers of the Code, i.e., inherent powers of the Court. In prescribing the rules or procedure the Legislature undoubtedly attempts to provide for all cases that are likely to arise, but it is not possible that any legislative enactment dealing with procedure, however, carefully it may be drafted, would succeed in providing for the cases that may possibly arise in future. Lacunae are sometimes discovered in procedural law and it is to cover such lacunae and to deal with cases when such lacunae are discovered that procedural law invariably recognises the existence of inherent powers in Courts.

6. Inherent powers are in the nature of extraordinary powers available only where no express power is available to the High Court to do a particular thing and where the express power does not negate the existence of such inherent power. The further condition of its exercise is that it must be necessary to resort to it for giving effect to an order under the Code for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

7. Similar observations have been made by their Lordships in *Dr. Raghubir Saran v. State of Bihar*, : 1964 CriLJ1 . The Apex Court in this case observed that every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice.

8. In *Emperor v. Sukh Dev*, AIR 1930 Lah. 465 the court observed that the authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have the power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote and to prevent injustice.

9. In *State of U.P. v. Mohd. Naim*, : [1964]2SCR363 their Lordships observed that Section 482 of the Code of Criminal Procedure confers no new jurisdiction or power on the High Court. It merely safeguards all existing inherent powers possessed by them necessary, to secure the ends of justice. These powers which the court inherently possesses have been preserved lest it be considered that the only powers possessed by them, are those expressly conferred by the Code and that no inherent power had survived the passing of the Code.

10. In *Niranjan Prakash v. Manni Lal*, (1963) 2 All. 13 the court observed that in exercise of the powers under this section the High Court would be justified to quash the proceedings if it finds that the institution or continuance of criminal proceedings amounts to abuse of the process of the court or if quashing of those proceedings would otherwise secure the ends of justice.

11. The High Court has the widest jurisdiction to pass orders to secure the ends of justice and it is only when it is necessary and in the interest of justice that the High Court should invoke these powers. In order to make it necessary three conditions should be fulfilled, i.e., the injustice which comes to light should be of a grave, and not of a trivial character; the injustice which is noted, should be of a clear and palpable & not of a doubtful character and there should exist no other provision of law by which the complainant could have sought relief.

12. Their Lordships of the Supreme Court in the celebrated case of *State of Karnataka v. L.Muniswamy & Ors.*, : 1977 CriLJ1125 observed that the saving of the High Court's inherent power to prevent abuse of process of the Court is designed to achieve a salutary public purpose, namely, that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this very judgment the court observed that 'ends of justice' are higher than even the ends of mere law, though justice has to be administered according to laws made by the Legislature. The consideration justifying the exercise of inherent power for securing the ends of justice vary from case to case and this wholesome jurisdiction cannot be encased within the straitjacket of a rigid formula.

13. In *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.* (1998) 1 SCC 692 the Apex Court held that while exercising inherent power of quashing under Section 482, it is for the High court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings.

14. In *Satish Mehra v. Delhi Administration & Another*; : (1996)9SCC766 , their Lordships of the Supreme Court observed as under:

' But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.'

15. In *Pepsi Food Ltd. And Anr. v. Special Judicial Magistrate and Ors.* : 1998 CriLJ1 , their Lordships of the Supreme Court observed that the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care caution while invoking such powers.

16. In *Madhu Limaye vs. The State of Maharashtra*; : 1978 CriLJ165 , their Lordships of the Supreme Court observed as under:

' On a harmonious construction it should be held that the bar provided in Section 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby, that the High Court will have no power of revision in relation to any interlocutory order. But in such a case, the inherent power will come into play there being no other provision in the Code for the redress of the grievance of the aggrieved party. In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference of the High Court, is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court.'

17. The facts of *G.V. Rao v. L.H.V. Prasad and Ors* (2000) 3 SC 693 are akin to the facts of the instant case. In this case the Apex Court observed that for determining the approach required to be kept in view in matrimonial dispute by the courts, it was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which the elders of the family are also involved, with the result that those who could have counseled and brought about rapprochement, are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts.

18. In another case titled *S.W.Palanitkar & Ors. v. State of Bihar and Anr.*, : 2001 CriLJ4765 , the Apex Court observed:

' Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position,

exercise of power under section 482 of Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under section 482 of the Criminal Procedure Code to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.'

19. In *Krishnan & Anr. v. Krishnaveni & Anr.*; : 1997 CriLJ1519 , their Lordships observed and the relevant portion reads as under:

' We hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.'

20. In *State of Karnataka v. M.Devendrappa & Anr.*; : 2002 CriLJ998 , their Lordships of the Supreme Court observed:

' Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exists. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of

these proceedings would otherwise serve the ends of justice.'

21. The Courts exist not only for securing obedience to the law of the land but also for securing the ends of justice in its widest sense. All Courts, including the High Courts can exercise such powers as the laws of the land confer upon them as well as such inherent powers to do justice as are preserved expressly or are not taken away by a statute.

22. In *Jacob Harold Aranha v. Mrs. Vera Aranha*, 1979 C L J B 974 it is observed :

'Though the powers possessed by the High Court are very wide, but the very plentitude of the power requires from the court great caution in the exercise of it.

The principles in relation to the exercise of inherent power of the High Court under Section 482 are:

The power is to be exercised 'ex debito justice' to do the real and substantial justice. Such powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice;

That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

That the power is not be resorted to if there is a specific provision in the Code for redress of the grievance of the aggrieved party;

That it should not be exercised as against the express bar of law engrafted in any other provision of the Code;

Inherent powers of the High Court should be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities'

23. If it is established prima facie that if a party wants to continue criminal proceedings against another only with a view to harassing him, the High Court can certainly quash the proceedings under Section 482. For this reason that the inherent power is undefined and indefinable, it should be only exercised cautiously and only under circumstances where exercise of such power is really called for.

These observations were made in *Mangattil Siddique v. K.M.Abdul Latheef and another*, 1989 Cr.L.J. 533.

24. In *Ram Narain v. Mool Chand & Ors.*; : AIR1960 All296 the court observed in order to seek interference under this Section, three conditions should be fulfilled for exercise of inherent powers:

The injustice which comes to light should be of a grave character and not of a trivial character;

The injustice which is noted should be of a clear and palpable character and not of doubtful character; and

There should exist no other provision of law by which the party aggrieved could have sought relief.

25. Their Lordships in *Mohd. Hafiz v. State*, 1977 Cr.L.J. 1458 (Allahabad) observed that there can be no more flagrant abuse of the process of court than this that on the basis of a fake order certain authorities may be persuaded to take some action which results in the deprivation of the personal liberty of a citizen. Powers under Section 482 are wide enough to protect a person's personal liberty when the same has been put in jeopardy owing to enforcement of a wholly fictitious order.

26. In *Chelpark Company Ltd. v. The Commissioner of Police, Madras and Ors*, 1969 Cr.L.J. 206 (Mad) the court observed that the High Court in exercising its extraordinary powers under Section 482 will take into consideration the gravity of the injustice brought to its notice and non-availability of an effective remedy otherwise. This power will be used sparingly in deserving cases. To secure the ends of justice, the High Court in its inherent powers can direct the police officer to do his duty where he has failed to do so.

27. Their Lordships of the Supreme Court in *Bharat Ranjan Misra v. Shyam Sunder Agrawal*, 1994 Cr.L.J. 268 (Ori)) observed that where in a case High Court is of the opinion that chances of an ultimate conviction are bleak and no useful purpose is likely to be served by allowing the criminal prosecution to continue, the

High Court may quash the proceeding even though at a preliminary stage as the court is not to be utilised for any oblique purpose.

28. In *Talab Haji Hussain v. Madhukar Purhottam Mondkar & Anr*; : 1958 CriLJ701 the court observed that the power under Section 482 are extraordinary in nature. therefore, it should be exercised sparingly and judiciously, with care and caution, in exceptional cases to prevent injustice and to do real and substantial justice.

29. It has been observed in 1915 (16) Cri.L.J. 477, In *Re S.Kuppusami Aiyar* that the High Court can interfere at any stage of the proceedings if it is necessary in the ends of justice.

30. It is observed in *M.R.Malhotra & Anr. vs. State*, : AIR1958 All492 that the court's jurisdiction under Section 482 can be exercised within the framework of law and not in violation of the law.

31. In *Md.Khalilur Rahaman v. State of Orissa*, 1989 Cr LJ 1845 the court observed that where it is apparent that all the disputes between the parties have subsided long back and they are divorced, the continuance of prosecution of the husband under Section 294 IPC will not achieve any beneficial result and the same has to be quashed by invoking the inherent powers of the Court.

32. In *Thathapadi Venkatalakshmi vs. State of A.P & Another*, 1991 Cr LJ 749 the court observed that where court has taken cognizance of offence under Section 498A IPC against the husband, thereafter some reconciliation has taken place and the parties seek compounding of the offence, in view of the larger interests of the parties and to secure the ends of justice, the court below may be directed under Section 482 to accord permission to compound the offence.

33. In *Smt.Daggupati Jayalakshmi vs. The State*, 1993 Cr LJ 3162 the court held that in exceptional circumstances, the High Court has got the power to exercise the power vested in it under Section 482 and permit the parties in matrimonial cases to compound the offence or direct the Magistrate to make an enquiry if one is required and permit them to compound the non-compoundable offence.

34. In *Dr.Vinod Kumar Goyal and Others vs. Union Territory and Others*, 1991 Cr LJ 2333 the court observed that where taking into account the allegations in the impugned FIR against in-laws, no prima facie case of commission of offence under Sections 406, 498A, 323/384/506 and 120 IPC has been made out, as such the impugned FIR and proceeding against them are to be quashed.

35. In *State of Mysore vs. K.C.B. Gowda & Another* 1957 Cr.L.J 455 the court observed that the inherent powers of a Judge of the High Court which have been statutorily recognised by Section 482, have general application. It cannot be disputed that a single Judge of the High Court in a matter, has the jurisdiction to decide those matters, of course, are the powers of the High Court and cannot in any way be controlled by a Division Bench or even a Full Bench of the High Court.

PART-II

The High Court's power under Article 226 of the Constitution.

36. The prerogative of writs which had been issued in England for centuries has a long legal history behind it. The power to issue similar writs was conferred on the Supreme Courts of Calcutta, Madras and Bombay by their respective Charters. The [Constitution of India](#) came into force on 26th January, 1950 conferring on all the High Courts similar powers to issue appropriate writs.

37. Under Article 226 very wide discretionary powers of most extensive nature were conferred on the High Courts. The very vastness of powers conferred on the High Court imposes on it the responsibility to use them with great caution and circumspection. Accordingly the High Court will necessarily exercise the jurisdiction in accordance with the well known judicial considerations and well-established principles.

38. As has been laid down in the judgment of the Apex Court in *M.P.Mittal v. State of Haryana* reported as : [1985]1SCR940 the discretionary remedies under Article 226 are for doing justice and correcting injustice and not the other way round.

39. Reasons which led the Framers of the Constitution to provide powers to High Courts and Supreme Court under Articles 226 & 32 are enumerated in :

[1953]4SCR1144 titled Election Commission v. Saka Venkata Subba Rao and : [1950]1SCR566 titled Rashid Ahmad v. Municipal Board, Rajrana. The Apex Court in these judgments has observed that 'Articles 32 & 226 have been incorporated in the Constitution primarily to ensure effective means of enforcing constitutional rights particularly fundamental rights. For centuries writs of habeas corpus have been considered as the most important writ for the protection of human liberty. Similarly, the writs of mandamus, prohibition, certiorari and quo warranto had proved their effectiveness in compelling the performance of public duty, in preventing inferior tribunals from going beyond their jurisdiction, in reviewing orders and convictions of inferior tribunals, and in inquiring into the right of a person to hold public office.

40. As aptly observed by the Apex Court in T.C.Basappa v. T.Nagappa reported as : [1955]1SCR250 . 'that in view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in the English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.'

41. In AIR 1958 SC 956 : The Kerala Education Bill, 1957, Special Reference 1 of 1958 their Lordships of the Supreme Court while interpreting the provisions of the Constitution observed that the law which seeks to take away or restrict the jurisdiction of the High Court under Article 226 must be held to be void. The most important powers which have been given to the court by the Constitution is under Article 226 to the High Courts and under Article 32 to the Supreme Court of India. Dr.Ambedkar in Constituent Assembly described Article 32 as the very soul of the Constitution because it provided effective remedies against violation of fundamental rights, remedies which no legislature could take away.

42. Before the pronouncement of the celebrated judgment of His Holiness Keshvanand Bharti Sripoadogalavaru v. State of Kerala, : AIR 1973 SC1461 , the view was that the powers under Article 226 cannot be taken away by any law

except by an amendment in the Constitution. But thereafter the consistent view has been that judicial review is the basic feature of the Constitution, it is an integral part of the Constitution and its basic structure and consequently the powers under Article 226 of the Constitution can not be taken away by a constitutional amendment.

43. In *S.P.Sampat Kumar vs. Union of India and Others* AIR 1987 (1) SC 124 their Lordships of the Supreme Court observed that even by an amendment, the powers of judicial review cannot be taken away.

44. In *Minerva Mills v. Union of India & Ors*, : [1981]1SCR206 it is observed that the power of judicial review conferred by Article 32 and 226 is part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution.

45. In the celebrated case *Raj Krushna Bose v. Binod Kanungo*, (1954) 202 S C R 913, the Supreme Court observed :

'Our power to make such an order was not questioned but it was said that when the legislature states that the orders of a tribunal under an Act like the one here shall be conclusive and final (Section 105), then we should not interfere. It is sufficient to say that the powers conferred on us by Article 136 of the Constitution and on the High Courts under Article 226 cannot be taken away or whittled down by the legislature. So long as these powers remain, our discretion and that of the High Courts is unfettered.'

46. Similar conclusions have been arrived at by the Supreme Court in *Sangram Singh v. Election Tribunal, Kotah Bhurey Lal Baya*, : [1955]2SCR1 . The relevant portion is reproduced:

' The jurisdiction which articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all Tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are

legal.'

47. A very large number of cases have been referred to this Division Bench on the ground that the learned Single Judges have no power or jurisdiction to quash proceedings under Article 226 of the Constitution read with Section 482 Cr.P.C. in view of the Full Bench Judgment of this Court. In *Gurbachan Singh Bhawnani v. The State and Another*, 2002 II AD (Delhi) 66. Now it has become imperative to consider the judgment of the Full Bench in correct perspective.

48. A learned Single Judge of this Court after noticing those judgments of the Single Judges and Division Benches in which the Court permitted compounding of all offences which are non compoundable by exercising powers under Section 482 of the Code of Criminal Procedure made reference to the Full Bench. The propriety of this order has not been questioned so we do not deem it necessary to decide that issue in this judgment.

49. On the reference made by the learned Single Judge, the Full Bench considered the various judgments of the Supreme Court cases. Though the Full Bench has observed that the offences which are not compoundable under Sub-section 9 of Section 320 cannot be dealt with under Section 482 of the Code. But, at the same time, Full Bench also observed that the principles governing quashing of criminal proceedings are well settled by the Supreme Court. Quashing of the FIR and proceedings thereon is permissible in terms of principles laid down in the case of *State of Haryana v. Bhajan Lal*, : 1992 CriLJ527 and subsequent judgments. Proper construction of the Full Bench judgment leads to the irresistible conclusion that the FIR can be quashed by the High Court in terms of principles laid down in *State of Haryana v. Bhajan Lal*(supra) and several subsequent judgments. In the said judgment their Lordships of the Supreme Court have laid down broad parameters or categories in which it would be permissible for the Court to quash the proceedings. Those categories are as follows:

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.

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.

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 made out a case against the accused.

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.

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.

Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings 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.

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

50. On proper scrutiny and analysis of the broad parameters in which courts would be justified in exercise of the powers under Section 482 of the Code of Criminal Procedure have been enumerated by the Supreme Court, what Apex Court has infact reiterated in seven broad categories is the soul and spirit of Section 482 of the Code of Criminal Procedure. In other words, according to the said judgments the Court will be fully justified in exercising its inherent powers to prevent abuse of

the process of the Court or to otherwise secure the ends of justice.

51. In our considered view, it would not be the correct interpretation of the Full Bench judgment that the learned Single Judges while exercising the powers under Section 482 of the Code of Criminal Procedure cannot quash the proceedings in any situation or circumstances. The Court categorically observed in the concluding portion of the judgment and the relevant portion of the Full Bench reads as under:

'Quashing of the FIR and proceedings thereon is permissible in terms of principles laid down in *State of Haryana v. Bhajan Lal* (supra) and several subsequent judgments'.

52. thereforee, in our considered view, no embargo has been placed by the said judgment on the learned Single Judges in the exercise of their powers under Section 482 of the Code of Criminal Procedure. All what the Full Bench has observed is that quashing of the FIR and proceedings emanating from the said FIR is permissible in terms of law declared by the Supreme Court in *State of Haryana v. Bhajan Lal* (supra) and subsequent judgments. In our considered view the powers and jurisdiction of the learned Single Judges under Section 482 of the Code of Criminal Procedure has not been abrogated, restricted or taken away or even diluted by any judicial pronouncements.

53. As early as in *Emperor v. Sukhdev and Ors* , AIR 1930 Lahore 465, the Court observed that the authority of the Court exists for the advancement of justice. If any attempt is made to abuse that authority so as to prejudice justice, the court must have power to prevent that abuse. Courts exist to promote justice and prevent injustice. In *L.Muniswamy* (supra) their Lordships observed that the High Court has inherent powers to prevent the abuse of the process of the Court designed to achieve a salutary public purpose, namely, the Court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

54. The Courts exist not only for securing obedience to the law of the land but also for securing the ends of justice.

55. In a large number of cases have emanated from Sections 498A/406 IPC and where complaints have been filed and thereafter the parties have reconciled their differences and the wife has again started living with her husband happily and thereafter the complainant approached the Court for quashing the FIR filed by her under Sections 498A/406 IPC. Though the offence under Section 498A is not compoundable but in order to prevent the abuse of the process of the Court and to secure ends of justice, the various High Courts in a very large number of cases have quashed the FIR under said sections. The FIRs have been quashed on the basis of ratio laid down by the Supreme Court judgment in State of Haryana v. Bhajan Lal and number of other judgments. The inherent powers have been used by various High Courts in a very large number of cases because the complainant wife after filing of the complaint has again started living with her husband and children, that she is living happily with her husband. She further states that now she has no complaint from her husband or his relations. In case the proceedings are not quashed in a case of this nature, then the parties will be compelled to face criminal prosecution and trial in entirely unwarranted and wholly unnecessary litigation. The prosecution is not likely to succeed because the complainant herself wants the complaint to be quashed. If the proceedings are not quashed, then the parties are likely to indulge in making false statements on oath before the Court. Deliberately false and misleading pleadings are likely to be filed in the courts. The witnesses will not support the case of the complainant and consequently the valuable public time of the Court would be wasted in wholly unwarranted and unjustified litigation, consequently relegating other urgent matters to back seat. It would be wholly unnecessary to compel the parties to waste their time and money in totally frivolous and unwarranted litigation. The courts must adopt pragmatic attitude and approach in the larger public interest to prevent the abuse of the process or to secure ends of justice.

56. On consideration of a large number of cases decided by their Lordships of the Apex Court and various High Courts it can be safely observed that the High Court under Article 226 of the Constitution and under Section 482 of the Code of Criminal Procedure have extremely wide powers to pass any order or give any direction which is imperative for advancing the cause of justice and for preventing an abuse of the process of the court or for otherwise securing the ends of justice.

57. These powers are requested to be exercised in extremely exceptional cases sparingly with circumspection and only for preventing the abuse of the process of law and for otherwise securing the ends of justice.

58. The powers of the Courts under Article 226 are extremely wide as laid down in Keshvanand Bharti's (supra) case that these powers cannot be taken away even by amendment of the Constitution. In Minerva Mills (supra) the Court has characterised that the power of judicial review conferred by Articles 32 and 226 as part of basic structure of the Constitution. The Court observed that judicial review is a vital principle of our Constitution and it cannot be abrogated without effecting the basic structure of the Constitution. therefore, as far as the existence of the power is concerned, it cannot be doubted and the power of the court under Article 226 of the Constitution cannot be abridged, abrogated or diluted even by the amendment of the Constitution. Neither the power can be taken away by judicial pronouncement, nor by legislative enactment or even by the amendment of the Constitution.

59. All concerned may clearly appreciate this fact that the learned Single Judge exercises the powers of the High Court. In conclusion, it can be safely concluded that the existence of the powers of the learned Single Judge under Section 482 and Article 226 to quash the proceedings cannot be disputed or questioned. However, those powers have to be exercised in consonance with the well recognised principles laid down in a catena of cases by the Supreme Court.

60. In V.K.Gupta vs. Smt. Nirmala Gupta, : [1980]1SCR506 , their Lordships observed that:

' It is fundamental that reconciliation of a reputed marriage is the first essay of the Judge, aided by counsel in their noble adventure. The sanctity of marriage is in essence, the foundation of civilization and, therefore, Court and counsel owe a duty to society to strain to the utmost to repair the snapped relation between the parties. This task becomes more insistent when an innocent off-spring of the wedding struggles in between the disputed parents.'

61. It is abundantly clear that the powers under Article 226 cannot be taken away or abridged by any law, for any such law would be void under Article 13 of the Constitution.

62. The controversy involved in this case is no longer rest integra. Their Lordships of the Supreme Court in a recent case B.S. Joshi and Ors. vs. State of Haryana and Anr. JT 2003 (3) 277 examined the ambit of the inherent powers of the High Courts under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the [Constitution of India](#) for quashing the criminal proceedings. Their Lordships also comprehensively examined a catena of judgments of the Apex Court.

63. The facts of B.S. Joshi's case (supra) are almost identical to the facts of Crl.W.No.1295/2002. The court considered what ought to be the approach of the Court in relation to matrimonial disputes. The Court observed that 'matrimonial disputes have been on considerable increase in recent times resulting in filing of the complaints by the wife under Sections 498A and 406 IPC not only against the husband but his other family members also. When such matters are resolved either by wife agreeing to rejoin the matrimonial home or mutual separation of husband and wife and also mutual settlement of other pending disputes as a result whereof both sides approach the High Court and jointly pray for quashing of the criminal proceedings or the First Information Report or complaint filed by the wife under Sections 498A/406 IPC. It is further observed that the Court should not decline the prayer on the ground that offences are non-compoundable under Section 320 of the Code and, therefore, is not permissible for the Court to quash the criminal proceedings or F.I.R. or complaint. The Punjab and Haryana High Court dismissed such petitions filed by the parties seeking quashing of the F.I.R. The High Court took the view that offences under Section 498A/406 IPC are non-compoundable and the inherent powers under Section 482 of the Code cannot be invoked to bypass the mandatory provision of Section 320 of the Code. The Apex Court set aside the judgment of the High Court and allowed the appeal and quashed the F.I.R. The position of law has been fully settled and crystalised in the judgment of B.S.Joshi (supra). The Apex Court clearly observed as under:

'we hold that the High Court in exercise of its inherent power can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.'

64. On careful analysis of the words incorporated in Section 482 of the Code of Criminal Procedure and the legislative intention as culled out from the catena of judgments mentioned above we can safely conclude that any legislative enactment dealing with procedure can not provide for all cases that can possibly arise. therefore, the court must have inherent powers apart from the express provisions of law incorporated in the Code. The inherent powers are absolutely imperative for proper discharge of duties imposed on the court by law.

65. The courts exist not only for securing obedience to the law of the land but also for securing the ends of justice in its widest sense. It should always be borne in mind that ends of justice are higher than the ends of mere law, though justice has to be administered according to laws made by the legislature.

66. Section 482 of the Cr.P.C. does not confer any new powers on the High Court, but merely recognises and preserves the inherent powers previously possessed by it. It merely declares that such inherent powers as the court may possess shall not be limited or affected by anything contained in the Code. The High Court has inherent powers to give effect to any order of the subordinate courts and to prevent the abuse of the process of any court or to secure the ends of justice.

67. As referred above in the case of L.Muniswamy (supra) that the consideration justifying the exercise of inherent power for securing the ends of justice vary from case to case and this wholesome jurisdiction cannot be encased within the straitjacket of a rigid formula. The exercise of power depends on peculiar facts and circumstances of every case.

68. In various cases, the courts have attempted to give different categories in which court's powers under Section 482 Cr.P.C. should be exercised but by no means those categories can either be comprehensive or exhaustive. They can only be illustrative in nature because it is not possible to provide comprehensive categories or guidelines in cases where inherent powers of the High Court ought

to be exercised.

69. The courts have observed that the court proceedings ought not to be permitted to de-generate into a weapon of harassment or persecution. In cases where ultimate chance of conviction is very bleak or there is no prospect of the case ending in conviction in such cases no useful purpose is likely to be served by allowing a criminal prosecution and trial to continue. It is advisable to truncate or snip the proceedings and save valuable time of the courts. The trial should not be continued only for the purpose of formally completing the proceedings to pronounce the conclusion on a future date. The courts must quash the proceedings in such cases at the earliest particularly when our subordinate courts are under extremely heavy pressure of workload.

70. The courts must always keep in view that courts exist for advancement of justice. If any attempt is made to abuse or that authority, so as to produce injustice, the Court must have the power to prevent that abuse. The courts exist only to promote justice and to prevent injustice.

71. Though the powers possessed by the High Court are extremely wide but the very plentitude of the power required the court to function with greater caution and circumspection in the exercise of those powers. In other words, the power under Section 482 of the Code of Criminal Procedure is to be exercised, *ex debito justitiae* to do real and substantial justice. To put it differently the inherent powers of the Court exist to do the right and to undo the wrong in the administration of justice.

72. The prerogative of writs have been issued in England for centuries. Though we borrowed the concept of writ jurisdiction from England but in the last five decades we have enormously developed our own writ jurisprudence according to our own judicial ethos and jurisprudence. The High Court's powers under Articles 226 and 227 have been enumerated in a very large number of cases. The extraordinary jurisdiction of the courts exist with the High Courts for doing justice and for removing injustice within the framework of the laws and the Constitution. The Constitution has given enormous powers under Article 226 of the Constitution to the Courts to ensure effective enforcement of Constitutional Rights particularly

fundamental rights. For centuries writs of habeas corpus have been considered as the most important writ for the protection of human liberty. Similarly, the writs of mandamus, prohibition, certiorari and quo warranto had proved their effectiveness in compelling the performance of public duty, in preventing inferior tribunals from going beyond their jurisdiction, in reviewing orders and convictions of inferior tribunals, and in inquiring into the right of a person to hold public office. The most important provisions of the Constitution dealing with the protection of human rights of the citizen are incorporated in Articles 32 & 226 of the Constitution. The powers granted to the courts under Article 226 are so sacrosanct, inviolable, unassailable and inalienable that those powers cannot be taken away from the court under any circumstances either by legislative enactments or judicial pronouncements.

73. When an aggrieved person approaches the court in a petition under Article 226 read with Section 482 of the Code of Criminal Procedure then the court is possessed with enormous powers to do justice or remove injustice. The Court's vast powers are meant to prevent any abuse of the process or to secure the ends of justice, both under Section 482 Cr.P.C and Article 226 of the Constitution. These powers must be exercised for the advancement of justice. Ends of justice are always higher than the ends of mere law and for accomplishing that noble goal the courts have rightly been invested with adequate powers.

74. The powers of the High court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution. As aptly observed in the Kerala Education Bill (supra) that the law which seeks to take away or restrict the jurisdiction of the High Court under Article 226 must be held to be void. In view of these powers, discretion of the High Court under Article 226 is unfettered.

75. In view of the principles of law culled out from the aforesaid judgments, these petitions are accordingly disposed of.

76. Before we part with the case, we would like to place on record our appreciation for extremely valuable assistance provided to this Court by Shri Rajiv Nayar, Senior Advocate and Mr. Akshay Bipin and Ms. Rashmi Chopra, Advocates.

77. These petitions are accordingly disposed of.

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